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**The big picture:
PIAC submission to the Productivity
Commission Inquiry
Electricity Network Regulatory Frameworks**

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Introduction

The Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit law and policy organisation that works for a fair, just and democratic society, empowering citizens, consumers and communities by taking strategic action on public interest issues.

PIAC identifies public interest issues and, where possible and appropriate, works co-operatively with other organisations to advocate for individuals and groups affected. PIAC seeks to:

- expose and redress unjust or unsafe practices, deficient laws or policies;
- promote accountable, transparent and responsive government;
- encourage, influence and inform public debate on issues affecting legal and democratic rights; and
- promote the development of law that reflects the public interest;
- develop and assist community organisations with a public interest focus to pursue the interests of the communities they represent;
- develop models to respond to unmet legal need; and
- maintain an effective and sustainable organisation.

Established in July 1982 as an initiative of the (then) Law Foundation of New South Wales, with support from the NSW Legal Aid Commission, PIAC was the first, and remains the only broadly based public interest legal centre in Australia. Financial support for PIAC comes primarily from the NSW Public Purpose Fund and the Commonwealth and State Community Legal Services Program. PIAC also receives funding from the Trade and Investment, Regional Infrastructure and Services NSW for its work on energy and water, and from Allens Arthur Robinson for its Indigenous Justice Program. PIAC also generates income from project and case grants, seminars, consultancy fees, donations and recovery of costs in legal actions.

Energy + Water Consumers' Advocacy Program

This Program was established at PIAC as the Utilities Consumers' Advocacy Program in 1998 with NSW Government funding. The aim of the program is to develop policy and advocate in the interests of low-income and other residential consumers in the NSW energy and water markets. PIAC receives policy input to the program from a community-based reference group whose members include:

- Council of Social Service of NSW (NCOSS);
- Combined Pensioners and Superannuants Association of NSW;
- Park and Village Service;
- Ethnic Communities Council NSW;
- Rural and remote consumers;
- Retirement Villages Residents Association;
- Physical Disability Council NSW; and
- Affiliated Residential Park Residents Association.

1. Overview

1.1 Our Key Message

PIAC considers that the current regulatory regime for Network Service Providers (NSP), including the regulatory incentive framework, has not fulfilled the primary obligation of the National Electricity Objective (NEO) —namely to serve the long-term interests of consumers.

PIAC is pleased that energy prices, including network charges, are now a focus of political and regulatory attention. PIAC notes particularly the AEMC's recognition of a number of the substantive issues in its Final Position Paper, published on 15 November 2012.¹

However, PIAC remains deeply concerned that any lack of urgency, commitment and strategic vision on reform, not only in the National Electricity Rules (NER) but also more broadly, will lead to an un-coordinated and delayed response to the issues identified in the Productivity Commission's Draft Report and in the many other studies on foot.

The regulatory arrangements that underpin the operation of the National Electricity Market (NEM) (including, but not only, the NER) need both a 'quick fix and deep reform'² to deliver on the NEO. The reform needs to deliver benefits to consumers through improving productivity and better sharing of the risks between shareholders and consumers.³

1.2 The focus of the current submission

PIAC has already highlighted these concerns in our submission to the Productivity Commission Issues Paper. This current submission responds to four sections of the Commission's recommendations in its Draft Report:

- Incentive Regulation and the WACC (Chapter 5)
- Ownership (Chapter 7)
- Benchmarking (Chapter 8)
- Governance and Consumer Engagement (Chapter 21)

1.3 Rewarding asset growth, not efficient consumer service provision

As noted in the Productivity Commission's Draft Report,⁴ incentive regulation is a tool for encouraging network businesses to minimise costs and implement cost-reducing investments aimed at improving the operating efficiency of a network.

While this is the objective of incentive regulation, the actual outcomes do not always reflect this intent. In particular, the very large increases in capital investment that have been approved under the current NER for many NSPs have resulted in significant increases in network prices without, it

¹ AEMC, *Economic Regulation of Network Service Providers and Price and Revenue Regulation of Gas Services, Final Position Paper*, 2012.

² To borrow a phrase from the European Commission's Climate Commissioner's recent assessment about the equally problematic EU carbon markets.

³ See discussion on page 19 and 20 regarding Ofgem's view on risk sharing and performance

⁴ Productivity Commission, *Electricity Network Regulatory Frameworks: Draft Report*, 2012, 178.

seems, commensurate improvements in operating expenses, productivity, service delivery, efficiency, reliability and peak demand management.

As the Australian Energy Market Operator (AEMO) correctly said in its submission to the Productivity Commission Issues Paper, the current regime of incentives rewards the assets constructed not the services delivered.⁵ PIAC endorses this statement and urges governments and regulatory bodies to ensure that this situation does not continue in the next round of regulatory determination for NSPs.

For this reason, the Productivity Commission's assessment of the regulatory incentive framework, including the regulatory rate of return, in the Draft Report is a welcome contribution to the debate.

1.4 Commitment to early reform and co-ordination required

PIAC's principal concern, as expressed in its response to the Commission's Issues Paper, is that without a strong commitment and co-ordinated response, key reforms to network regulation may not be in place in time for the next round of regulatory determinations on network revenues.

To achieve this aim, priorities for reform, which address the more obvious failures of the current regime, need to be put in place as soon as possible. However, this needs to happen within an overarching strategic framework for reform that has the long-term interests of consumers at its centre. The concern is that, with so many reports and conflicting interests, the outcome could be piece meal reform that benefits neither consumers nor the network industry.

As AEMO suggests, the essential issue within the current network regulatory regime is its focus on the assets not the services delivered to consumers.⁶ As a result the regime has failed to drive improvements in productivity and efficiency. Rather, network charges have increased while productivity appears to have declined.

Beyond this, there are a number of key limitations that have been identified in the current regulatory incentive regime including:

- limitations imposed under the Rules, including the Propose-Respond model on the AER's discretion to amend a proposal by an NSP;
- concern that the AER had not fully used the discretionary powers that it has, for instance, to put in place an incentive scheme for capital expenditure or to apply more rigorous benchmarking;
- the absence of a clear benchmarking framework and a reliable and coherent body of data and modelling to support it, thereby hindering the AER's assessment of the NSPs proposals and the implementation of stronger performance incentive schemes;
- the Tribunal's relatively narrow, formalistic approach to reviewing an NSP's appeal which has resulted in aggregate WACC outcomes that have distorted the balance between the interests of investors and consumers in a way that does not appear to be consistent with the NEO⁷; and

⁵ AEMO, *Electricity Network Regulation AEMO's Response to the Productivity Commission Issues Paper*, 2012, 3.

⁶ Ibid.

⁷ PIAC believes it is appropriate for the regulatory authorities to provide a regular analysis using publicly available data of private and government NSPs financial performance as reported to their shareholders (including profit margin, dividend, tax, competitive neutrality, and CSO payments to state governments). This could be included in the annual benchmarking publications recommended by the AEMC.

- conflicting jurisdictional reliability standards, particularly those reliability standards that focus on inputs rather than service delivery outputs.

It is essential that these issues are dealt with as a reform priority and within a clear economic and social framework that includes, at its heart, an over-arching vision of the long-term interests of consumers.

1.5 Actions are possible within the current Rules

PIAC recognises that the process of Rule change to achieve these outcomes can be difficult and slow. We therefore support the intent of looking at an accelerated Rule change process where there has been demonstrable failure of the Rules and as long as community consultation is not truncated.

However, substantial improvements can also come within the framework of the current Rules through (for instance) the progressive development of performance benchmarks and effective capital investment incentive and demand management incentive schemes.

The difficulty of the Rule change processes should not stop progress in these areas or prevent the adequate resourcing of the AER to enable such progress to occur efficiently and in a reasonable time frame.

There remains, however, an open question regarding the extent of changes to the Rules and the general regulatory framework, which would be required to achieve greater consumer focus in the decisions by the Tribunal.⁸ It is quite likely that increasing the resources available to the AER and improving benchmarking processes under the current Rules will address many of the issues raised by the Tribunal when disallowing the AER's preferred position.

1.6 Involving consumers in the regulatory process

PIAC welcomes the Productivity Commission's focus on increased consumer input into regulatory processes such as price determinations. However, PIAC cautions that the current arrangements have not created a pool of professionals skilled in consumer advocacy, energy policy, economic modelling, engineering, energy law and economic regulation to the degree that they are ready to play an integral role in brokering mutually acceptable settlements that could replace or reduce a determination process.

Of course, a national consumer body that works in conjunction with existing energy advocacy organisations could develop the skills to step into such a role over time. However, care should be taken to plot a transitional path so that consumer engagement can increase as high-level energy consumer advocacy skills in this area mature. In the short term, however, and without the requisite skills and resources, PIAC is concerned that a great weight of responsibility could be levied on a consumer group to settle for options presented by NSPs.

PIAC's detailed response to the Productivity Commission recommendations follows.

⁸ Yarrow G, Egan M & Tamblyn J, *Review of the Limited Merits Review Regime Stage Two Report*, 30 September 2012, 3 – 4.

2. Regulatory incentives

DRAFT RECOMMENDATION 5.1

The Australian Energy Regulator should develop an efficiency benefit sharing scheme to apply to capital expenditure that provides consistent incentives to reduce capital expenditure, both over time and when compared with operating expenditure.

PIAC supports this recommendation, noting that the absence of a capital expenditure Efficiency Benefit Sharing Scheme (EBSS) is arguably one of the more important contributors to rapid growth in claims for capital expenditure and declining productivity in the industry including many of the NSPs.⁹

The development of an EBSS to apply to network capital expenditure is a difficult balancing task requiring decisions on how benefits are shared between investors and consumers to achieve the NEO. An EBSS also risks creating perverse incentives (such as the inefficient postponement of investment to subsequent regulatory periods), which will need to be managed carefully by the regulator.

Notwithstanding these difficulties, the current situation where the AER has developed an EBSS for operating expenditures but not for capital expenditures has proved problematic and appears to create significant economic distortions at the expense of consumers. For instance:

- a NSP can maximise its return by substituting capital costs for operating costs (eg, by replacing assets before the end of their technical life rather than incurring operating costs to maintain them);
- this may in turn result in operating costs below forecast and therefore the NSP receives an 'efficiency' dividend under the operating cost EBSS; and
- the additional capital expenditure can be rolled into the Regulated Asset Base (RAB) for the next regulatory period, without regulatory scrutiny of its prudence or efficiency. This increases future returns and is a particular problem where the NSP's actual weighted average cost of capital (WACC) is less than the regulated WACC.

It is perhaps not surprising therefore that the initial round of regulatory decisions under the NER has seen such a rapid expansion of capital expenditure forecasts and (at least in some instances) actual capital expenditure being even greater than the already inflated regulatory capital allowance.

A capital expenditure EBSS should be designed to incentivise NSPs to:

- make more efficient choices between capital and operating expenditures;
- improve their forecasts of capital expenditure requirements;
- continuously improve technical efficiency & productivity; and
- efficiently allocate their capital investment within and between regulatory periods.

⁹ For instance, in 2010 IPART identified a significant decline in both multi-factor productivity and partial factor productivity in NSW distribution businesses. IPART, *Review of the Productivity Performance of State Owned Corporations: Other Industries – Final Report*, 2010.

Establishing the most effective incentives to improve capital expenditure efficiency will also require careful consideration about how benefits are shared between the NSP and the consumer. For instance, in the first regulatory period of the implementation of a capital expenditure incentive scheme it may be more appropriate to provide a greater share of any savings to the NSP, while increasing the share to the customer over subsequent regulatory periods.

The potential for ‘gaming’ a capital expenditure EBSS by, for instance, postponing an approved capital investment to the next regulatory period should be considered in the design of any new EBSS. Without sufficient additional controls within the EBSS framework, a NSP might maximise its returns by shifting approved capital expenditure to the next regulatory period so that in the current period it obtains revenue as if the project proceeded plus an EBSS payment, then claim the same capital costs in their next regulatory review.

At a minimum, this suggests that the introduction of a capital expenditure EBSS must also ensure that:

- the NSPs provide sufficient detail to the AER of their forecast capital expenditure program (before the determination) and their actual capital expenditure such that the AER can identify and address at least the more substantive instances of ‘double-counting’; and
- the AER is appropriately resourced and has developed adequate benchmarks on capital expenditure with robust monitoring systems.

In addition to developing effective controls described above, the effectiveness of a capital expenditure EBSS will also be much enhanced by addressing other elements of the regulatory package, including:

- further development of the output performance measures, such as the Service Target Performance Incentive Scheme (STPIS), to ensure that capital expenditure is not reduced at the expense of long-term performance and service to consumers;
- regular review by the AER of the WACC parameters noting that the closer the regulatory WACC is to a NSP’s actual cost of capital the less incentive there is to manipulate forecasts, exceed or underspend allowances or distort the timing of the capital investment between and within regulatory periods;
- amend the Rules to allow contingency projects to be recognised as part of the determination process for distribution network service providers (DNSPs) as well as transmission network service providers (TNSPs)¹⁰, providing additional opportunities for DNSPs to manage their risks but to do so within the discipline of a regulatory review process; and
- agreement prior to a determination about the way in which the AER will treat approved regulatory pass-throughs and any contingency projects within the subsequent capital expenditure EBSS assessment. The EBSS must account for these approved additional costs; however, it also requires a mechanisms to ensure that the investments were efficient.

¹⁰ Currently, TNSPs can submit a claim to the AER for contingency projects, subject to certain trigger events and other tests (NER Chapter 6A.8), DNSPs are not provided with this option although there are specified pass-through events set out in Chapter 6.6 of the NER.

DRAFT RECOMMENDATION 5.2

The National Electricity Rules should specify the interdependent nature of the parameters used to estimate the weighted average cost of capital, and specify that any merits review must also consider the relevant rule in that light.

PIAC agrees with the recommendation. Both the regulated WACC and its relationship to an NSP's actual WACC have significant impacts on the ultimate price to consumers. It is, therefore, essential that both the AER and the Tribunal are empowered to consider the interrelationships between the WACC parameters and, in particular, if one parameter is varied the appropriate adjustments are made to other interrelated parameters of the WACC. Both the AER and the Tribunal should also consider these interrelationships in the context of the 'reasonableness' of the aggregate WACC when benchmarked against a comparable commercial entity.

The Productivity Commission Draft Report notes that there is nothing in the Rules that prevents the AER considering the inter-relationships of the various parameters (p 198). However, until recently the AER's focus has been on the bottom-up evaluation of each individual WACC parameter, without further analysis of the interactions between the parameters and the impact of these on the overall WACC.

This has allowed the NSPs to appeal the AER's determination on individual parameters such as the risk free rate of return (RFR) or the debt risk premium (DRP). In turn, the Tribunal has ruled on these individual components without apparent regard to the countervailing effect of its ruling on other WACC parameter values and, most importantly, on the reasonableness of the aggregate regulatory WACC. In other words, the Tribunal's process has not paid due regard to the appropriateness of its overall decision, because attention has been focused on individual components of the decision in isolation.

For instance, in their report to the AEMC, Strategic Finance Group Consulting (SFG) highlighted the inverse relationship between the risk-free rate and the debt margin – the higher the risk-free rate, the lower the debt risk margin for regulated infrastructure entities.¹¹

In principle, as it is not prevented by the Rules, the AER could have defended its decisions on the WACC on the basis that the overall WACC was consistent with the NEO and, more specifically, in accordance with rule 6.5.2(b) of the NER, which explicitly links the overall regulatory WACC to a benchmark, industry comparison test:

¹¹ Strategic Finance Group Consulting (SFG) *Rule change proposals relating to the debt component of the regulated rate of return*, 2012, 43. The risk free rate was calculated on the basis of the current yield on 10-year Commonwealth Government bonds. SFG note that during periods of financial crisis, a flight-to-quality occurs which has the dual effect of reducing government bond yields and increasing the debt risk premium. The converse applies during stable economic periods.

Based on this inverse relationship, SFG set out the following relationships between the risk-free rate (RFR) and the debt risk premium (DRP) (as page 52-53): if the RFR =<3%, the DRM range was between 3% - 5%. If RFR was =>9%, the DRM was 1% - 2%. Extrapolating between these upper and lower boundaries, if the RFR was 4% then the DRM was 2.7% - 4.5%.

The rate of return for a Distribution Network Service Provider for a regulatory control period is the cost of capital as measured by the return required by *investors in a commercial enterprise with a similar nature and degree of non-diversifiable risk* as that faced by the distribution business of the provider¹² ... emphasis added

However, the AER chose not to test this principle at the Tribunal, nor has the AER to date sought to seek variation of the other parameters, despite the fact that it is widely accepted that there are inter-relationships. For instance, a higher risk free rate is generally associated with a lower debt risk margin as suggested by the SFG report.

Part of the difficulty facing the AER is that the Tribunal has taken the position in one of its earliest decisions that the AER must provide convincing evidence on two fronts, namely (a) the ‘unreasonableness’ of the NSPs proposed WACC component values, and (b) why its own (ie, the AER’s) proposal on each WACC element is both reasonable and preferable.

This is clearly a difficult task for the AER because the relevant evidence to support the AER’s preferred position on WACC parameters has largely relied on economic experts, and because of the nature of the parameters and limitations of acceptable empirically-based benchmark data. Absent this, the debate becomes a debate between ‘expert’ opinions, making it difficult for the AER to prove the NSP’s proposal is ‘unreasonable’ under the circumstances.

For this reason, we believe it is valuable to amend the Rules to make it quite clear that the AER can legitimately consider and give weight to both the interrelationships between the WACC parameters and to the aggregate WACC.

As suggested by the Productivity Commission, this Rule change would, however, be more readily applied in practice were the Tribunal also explicitly required to take account of the interrelationships between parameters and of the reasonableness (or otherwise) of the AER’s aggregate WACC.

The need for there to be a more explicit requirement for the Tribunal to consider the inter-relationships and overall WACC as well as the individual WACC parameters is further supported in the public review of the Limited Merits Review Regime commissioned by SCER and conducted by Yarrow et al. The Stage One Report by Yarrow et al states with respect to the way that the Limited Merits Review regime has developed in practice:

Instead, a narrower, more formalistic and more formulaic approach to review has developed, which has been relatively detached from the promotion of the objectives set out in the NEL.¹³

In their Final Report, Yarrow et al have recommended substantial changes to ensure a better alignment between the Tribunal’s decisions and the long-term interests of customers as set out in the NEO and the National Gas Objective (NGO):

¹² NER, 6.5.2(b).

¹³ Yarrow G, Egan M & Tamblyn J, *Review of the Limited Merits Review Regime Stage One Report*, 2012, 3.

In order to address the problems identified, the Panel has concluded that a more significant reorientation of the review process is warranted, as part of a more general reorientation of aspects of wider energy policy (made inevitable by climate change issues). Central to this shift is recognition that *utility regulation is motivated by concerns about the interests of consumers both now and in the future.*¹⁴ emphasis added

There is a more general concern, however, that while the Rules should be explicit about the AER's discretion to consider the inter-relationships between WACC parameters, the inter-relationships themselves should not be quantified within the Rules, at least given the current level of understanding.

Thus, while the Rules may describe in general terms the types of inter-relationships that could occur between the WACC parameters, they should not attempt to quantify these relationships. Rather it should be left to the discretion of the AER to assess these as part of a periodic review of all the WACC parameters. In addition, at the time of each NSP determination, the AER should be empowered to consider these interrelationships in the context of reasonableness of the resulting overall regulatory WACC.¹⁵

DRAFT RECOMMENDATION 5.3

Estimates of the debt risk premium and risk free rate used in the calculation of the weighted average cost of capital should be calculated using long-term trailing averages.

PIAC believes that this is a complex issue that warrants further investigation before deciding to use trailing average for calculating the debt risk premium or the risk free rate. The investigation needs to take account of the impact on efficient investment decisions; what, if any, transitional arrangements are required and the effect on other WACC parameters.

PIAC understands that the November 2012 Rule change decision by the AEMC will allow the regulator considerable discretion to set the details for each determination in accordance with the circumstances prevailing at the time. While in principle we agree with providing greater discretion we would also highlight the benefits to consumers of consistency and certainty and urge the AER, to give proper weight to consumers' interests.

The current approach, which focuses on using the most recent interest rate data to calculate the DRP and the RFR, attempts to replicate the cost of future borrowings by an efficient regulated entity. The trailing average approach sets the cost of debt based on estimations of historical borrowing costs.

Both approaches have their benefits and problems, the relative significance of each of these depending on factors such as the size of the entity, their current debt portfolio etc.

Our initial concern with the current approach relates to the relatively arbitrary nature of the decisions around the assessment of the DRP and RFR parameters and the potential for 'cherry-

¹⁴ Yarrow G, Egan M & Tamblyn J, above n 8, 3 – 4.

¹⁵ On 15 November, the AEMC announced a number of changes to the NER a Rule including a requirement that the regulator (AER) conducts an open and consultative process at least every three years to develop its approach to the rate of return. See AEMC, Final Position Paper, 14 November 2012.

picking' of inputs such as the measurement period by the NSP and the greater potential for volatility between various AER determinations in the same regulatory 'round'.

In the 2009 appeal by Energy Australia & others,¹⁶ the core dispute was over the averaging period used in calculating the risk-free rate (and, by inference the DRP period). In this important test case, the AER had rejected the 20 business day averaging period for the RFR proposed by Energy Australia in favour of a period closer to the time that the new regulatory period commenced. The Tribunal rejected AER's determination on the RFR largely on the basis that it did not establish why Energy Australia's selection was unreasonable in all the circumstances.

This decision on a relatively banal parameter¹⁷ of the WACC came at a cost of approximately 2 billion dollars to NSW consumers over the current 5-year regulatory period (given its flow on to all DNSPs and TNSPs in NSW).¹⁸

Consumer advocates struggle to understand how consumers have come to pay so much more on their bills as a result of the arbitrary selection of an averaging period.

Moreover, it seems improbable that either public or private electricity NSPs would fund their debt in such a manner and, therefore, it is most unlikely that the resulting debt parameters would correspond closely to actual debt cost. In practice, the private commercial businesses would seek to raise funds for future capital expansion over a longer period and with different maturity dates to ensure a diversified portfolio. As stated, for instance, in a recent ASX release by Spark Infrastructure:

The Asset Companies maintain solid debt books with diverse funding sources and well-spaced maturity profiles. CitiPower's secure cash flows and quality operations mean it has again been able to secure competitive pricing in the current debt market.¹⁹

Notwithstanding that there are benefits in greater stability, and logic around the calculations of the DRP using a long-term trailing average, PIAC acknowledges that there are multiple views about the impact such a change would have on other parameters, the change in the risks facing investors (and consumers) and the need for transitional arrangements.

Moreover, if there was good reason to believe that the past was different from the future (a step change), then the trailing average calculation would be less reflective of the actual cost of debt across the new regulatory period. For instance, the economy has moved from a period of relative stability to one of significant volatility since the global financial crisis, impacting on the both equity and debt markets.

PIAC has also noted that decisions would still be required about the time period for calculation of the trailing averages, whether it applies to both the DRP and the RFR calculations and whether it would be updated annually or remain in place for the 5 years of the regulatory period (as per the

¹⁶ *Application by Energy Australia and Others* [2009] ACompT8.

¹⁷ There is no specific requirement under the Rules for a given period, or a given date range and, as a result, this has varied from one NSP proposal to another.

¹⁸ See Table 5.2 in Productivity Commission, *Electricity Network Regulatory Frameworks: Draft Report*, 2012, 201.

¹⁹ Spark Infrastructure, *ASX Release—CitiPower executes new \$335 million syndicated bank facility* (2012), <http://sparkinfrastructure.com/investor/asx-announcements> at 20 November 2012.

current arrangements). Our view is that this requires further analysis, although the SFG paper is a useful start.²⁰

2.1 Discretion by the AER

Reflecting the many different views and individual business situations, the Rule change established by the AEMC in November 2012 gives much greater discretion on what assessment to use within the agreed framework and how it should be applied in any particular determination.

A key feature of the new framework is that the allowed rate of return is effectively determined on a ‘determination by determination basis’. This will enable the regulator to better respond to changing financial conditions...²¹

However, PIAC also agrees with the cautionary note in the Productivity Commission’s Draft Report that the use of the discretion must take into account the effect on incentives for DNSPs to ‘raise funds and manage risk efficiently’.²²

In addition, we believe this discretion should be exercised in a manner consistent with providing reasonable certainty to investors but also to consumers (who also need some certainty in order to plan their investments). The risks to both parties need to be considered.

For example, the suggestions by some commentators that the WACC parameters be updated each year may have some limited ‘risk management’ benefit to the NSPs (putting aside the administrative complexities and costs) compared to a constant WACC for the five year period. However, this flexibility is likely to come at the expense of planning by the users of electricity (given the sensitivity of network prices to WACC decisions). Moreover, NSPs are in the better position to manage the risk by, for instance, interest rate hedging and portfolio-based debt management.

Others have suggested (through the AEMC Rule change process) that the averaging approach should vary according to the particular DNSP being considered. Our view is that this not only adds uncertainty across different regions (and time), but is inconsistent with 6.5.2 (b) of the NER which arguably requires the AER to consider the WACC parameters in the context of the return required by the general class of investors in a commercial enterprise.

PIAC would urge the proposed increase of flexibility and discretion for the AER be used with caution with proper weight given to the wider community benefits of consistency and stability in the determination process and equitable sharing of risks.

As a final point, the granting of a wider discretion to the AER must be combined with an obligation on the AER for greater transparency and consultation with stakeholders. Including the AER’s proposed approach in the existing obligations for a formal and transparent WACC update/review process at every three or five years would provide some measure of assurance on this.

²⁰ SFG Consulting, above n 11.

²¹ AEMC, above n 1, 7.

²² Productivity Commission, above n 4, 200.

DRAFT RECOMMENDATION 5.4

Where, within a given regulatory period, a network business spends materially more capital than that allowed for in the Australian Energy Regulator's final ex ante regulatory determination, then its entire capital expenditure should be subject to an ex post prudence test:

- **Only spending that is deemed efficient and prudent, given the information available to the network business at the time, should be included in the Regulatory Asset Base at the end of the period, subject to the condition that:**
 - **the maximum disallowable expenditure is no more than the difference between the ex ante forecast and realised expenditure**
- **If a network businesses is aware that it is going to exceed pre-approved spending levels, it should be able to apply for pre-approval to avoid the ex post assessment.**

The prudence test should not apply to cost pass throughs and contingent projects permitted under chapters 6 and 6A of the National Electricity Rules.

PIAC is very concerned about the impact on consumers of capital investment that is in excess of the (already significant) allowed capital expenditure, given that such investment is automatically rolled into the RAB.

However, PIAC is also concerned with the risk that the ex-post prudence test becomes just another costly regulatory debate resolved only by Tribunal decisions. A coordinated approach to the capital expenditure EBSS and ex-post review may minimise this risk to consumers.

It is clear that there must be strong incentives for NSPs to forecast their capital requirements as accurately as possible, and to operate within this business plan (just like any other commercial entity must forecast and operate within set capital constraints). Further, in PIAC's view, the regulatory framework should provide disincentives for over-spending on capital (assuming the Rules adequately allow for cost pass throughs of specified uncontrolled events and for contingent projects²³ within a regulatory period).

The network companies have expressed the view that post-hoc reviews of capital expenditure will add to investment uncertainty. PIAC considers this concern is both over-stated and ignores the uncertainty that the current arrangements impose on consumers.

As noted above, a comparable commercial enterprise (against which the regulatory WACC is 'benchmarked' under the Rules) would have to apply budget constraints on their use of capital and to re-prioritise, cancel, postpone, or find efficient alternatives to stay within their forecast capital expenditure. Moreover, in a commercial enterprise shareholders would have to share the risks of management performance and funding arrangements that are not optimised to the changes in the real world.

²³ The NER provide a DNSP the ability to seek a pass through of costs related to certain events (6.5.10, 6.6.) but not for 'contingent projects'. We support current proposals to amend the Rules to allow for contingency events for DNSPs.

In fact, the NSPs already have an advantage over their commercial comparator cousins (perhaps appropriate given they are providing an essential service) through the existing cost pass through arrangements. Certainly, their level of accountability for effectively forecasting and managing capital expenditure should be no less than these other enterprises, and investors no more concerned. The WACC is not calculated on the basis of “No risk” for shareholder – there is, for instance, an allowance of 6% for equity risk premium.

Given this, PIAC supports the general thrust of the Productivity Commission’s recommendations. However, it will be no simple task to balance the requirements for NSPs to be able to defend their excess expenditure on the one hand with, on the other hand, the need to minimise the cost and time spent by the AER in forensic investigation and dispute management arising from the ex-post review.

As a result we consider that there should be further investigation of the way a post-hoc review would work in conjunction with a capital expenditure EBSS, and whether this could be done in a way that would reduce the complexity and costs of the review.

DRAFT RECOMMENDATION 5.5

The National Electricity Rules should be clarified to indicate that the Australian Energy Regulator is only required to test the reasonableness of the overall expenditure proposal. The Regulator should only be obliged to consider the reasonableness of a specific expenditure item if it could materially affect the judgment of the reasonableness of the total expenditure forecast.

PIAC supports the principle that the AER should be able to focus on the reasonableness of the overall expenditure proposals in preference to a more forensic examination of the reasonableness of specific expenditure. However, concerns remain about the practicalities of implementing this given the current Rules and their interpretation by the Tribunal.

In particular, it is not clear that the AER’s focus on the aggregate expenditure proposal could be sustained on appeal, given the current Tribunal’s interpretation and focus on specific components of the decision.

Moreover, in the event that the regulator is empowered to conduct post-hoc reviews of capital expenditure, a more forensic examination of expenditure proposals in the pre-determination process may assist the post-hoc evaluation.

DRAFT RECOMMENDATION 5.6

In cases where the Australian Energy Regulator considers that the National Electricity Rules constrain its capacity to make appropriate revenue determinations, it should publish its preferred estimate along with the final determination, explaining the differences. In any subsequent merits review of its determination, the Australian Energy Regulator should ensure that the reasons behind its preferred estimate are clearly communicated to the merits review body.

PIAC offers qualified support for this recommendation. Publication of the preferred estimate may provide greater transparency and guidance for any future reform of the Rules and, perhaps, serve as ‘moral suasion’ on excess expenditure claims seen to be extreme (albeit technically compliant). However, it does not see how this will change actual outcomes under the current Rules and their interpretation to date by the Tribunal.

Having made its decisions in accordance with the constraints of the Rules, the AER is hardly likely to appeal its own decision even if it is not satisfied with it from an objective point of view. On the other hand, if it is the NSP appealing the decision, the Tribunal is not likely to be sympathetic to the AER’s preferred estimate if the Rules have not provided for it.

In fact, the Tribunal has indicated in its decisions to date that the AER cannot simply reject a NSP’s proposal simply because it would prefer another one. The central legal requirement is to establish clearly that the NSP proposal is ‘unreasonable’ in all the circumstances and consistent with the Rules.²⁴ The Tribunal is unlikely (based on their current thinking) to be moved by the AER’s considerations of a preferred position outside the Rules.

It is possible, perhaps, that if the AER provides a detailed explanation of their preferred estimate (albeit one they have not included in the determination itself), this may in turn serve as a deterrent to the NSP appealing the determination. Perhaps the Tribunal might consider the AER’s views as part of its deliberation of a NSP initiated appeal?

However, it is more likely that any benefits to the consumers from the AER adopting this recommendation are more indirect, such as providing greater transparency and guidance to the AEMC, governments and consumers for future rule change proposals.

Notwithstanding the points made above, PIAC does not believe consumers would welcome the knowledge of preferred pricing that current Rules prevent them from accessing. Therefore a more direct benefit would be to ensure the Rules do not constrain the AER’s capacity to make revenue determinations that are appropriate to the provision of an essential service.

3. Ownership

DRAFT RECOMMENDATION 7.1

State and territory governments should privatisate their state-owned network businesses.

PIAC has no ideological position on privatisation. Rather, it advocates for outcomes that produce the best outcomes for consumers. Regardless of ownership, PIAC urges all decision makers to support a regulatory framework that allows only the efficient costs of providing an essential service to be passed through to consumers.

²⁴ For example, *East Australian Pipeline Pty Ltd v Australian Competition and Consumer Commission* [2007] HCA 44; (2007) 233 CLR 229, [80] was cited with approval by the Tribunal in the Application by United Energy Distribution Pty Limited [2012] AComPT 1, 52, ‘At one extreme a decision that is arbitrary or capricious will plainly be unreasonable. At the other extreme, it will not be sufficient merely to reach a different decision to the first instance decision maker; in many areas reasonable persons can perfectly reasonably come to opposite conclusions.’

DRAFT RECOMMENDATION 7.2

If state and territory governments do not implement draft recommendation 7.1, then they should promote more efficient outcomes for their state-owned network businesses by ensuring that:

- **directors are appointed on merit, following a transparent selection process**
- **ministerial directions are publicly disclosed at the time they are made and disclosed in the annual report**
- **directors and officers are subject to the obligations under the Corporations Act**
- **governments review objectives currently given to network businesses and:**
 - **remove those that would be more appropriately allocated to other agencies**
 - **remove those that are non-commercial and make it clear that the board is expected to deliver a dividend payout and rate of return on the equity invested in the network business that would be considered acceptable by an independent investor**
 - **where conflicting objectives remain, provide publicly transparent guidance on how to prioritise them.**

PIAC generally agrees with this proposal to promote better governance arrangements for state-owned NSPs. However, as it is not unusual for commercial companies to include non-commercial objectives in their business charter, PIAC believes that state-owned companies should not be precluded from similar objectives—where these objectives are transparent and kept separate from the regulatory cost base.

4. Using benchmarking

DRAFT RECOMMENDATION 8.1

The Australian Energy Regulator should regularly undertake aggregate benchmarking of the performance of network businesses, including of their:

- **multifactor productivity — the output of services for given inputs**
- **separate productivity of capital, labour and intermediate inputs.**

The results should control, to the best extent available, for any significant variations in the operating environments of the businesses, including customer density, line type and length, reliability requirements, and the capital vintage of relevant assets.

PIAC has previously indicated its strong support for the progressive development of different forms of benchmarking that together will highlight to consumers and regulators the productivity and relative performance of the NSPs.²⁵

²⁵ Public Interest Advocacy Centre, ‘A fair comparison: PIAC submission to the Productivity Commission Inquiry Electricity Network Regulation’, Darach Energy Consulting Services and Carolyn Hodge 2012.

In the interests of all consumers, the current decline in network productivity and the rapid rises in the price of network services must be addressed. High-level performance benchmarking is an important element of this process.

For benchmarking to be more than an intellectual (and controversial) exercise, however, it is most important to control for a range of external factors that influence the outcomes, and to clearly communicate the impact that these factors may have on the benchmark results and the limits this places on direct comparisons between NSPs.

However, as PIAC has highlighted in its original submission, while recognising these limits, it is still essential for consumers that the benchmarking process is started, and improved over time. This is facilitated if there is a focus on key well-defined variables and if the regulatory process can avoid becoming bogged down in esoteric debates about the detail.

PIAC has previously noted in relation to this that many of the NSPs already participate in various industry benchmarking and have used these to assess and guide their businesses. These benchmark services have been running for some time and NSPs seem to find this type of benchmarking sufficiently robust to be of use in their business. It seems therefore to provide a good starting point for developing regulatory benchmarks.

DRAFT RECOMMENDATION 8.2

Subject to compliance and other costs (draft recommendation 8.12), the Australian Energy Regulator should accompany aggregate analysis with detailed benchmarking of particular aspects of the performance of the businesses, including:

- ***the rate of investment relative to the age-weighted capital stock by asset class***
- ***the efficiency of major maintenance activities***
- ***the adoption rate of best-practice commercial processes and equipment, including the use of customer panels and surveys, outsourcing, demand management, information technologies, financial controls, procurement practices, occupational safety, and project management.***

In determining relevant benchmarking performance and control variables, the Australian Energy Regulator should consult with:

- ***network businesses, generators, retailers and network equipment suppliers***
- ***customer representatives***
- ***relevant experts within Australia and internationally.***

PIAC generally supports this proposal, including the consultation with stakeholders. However, the degree of detail sought by the regulator from the NSPs in the benchmarking process should also be considered against the increasing costs and complexity of collecting data and interpreting model outputs. Ultimately, the costs will be borne by consumers, so it is essential that the benefits to consumers are clear.

It is likely that most NSP IT systems are not set up to deliver consistent and reliable performance reporting to the level of detail recommended above and/or in the formats required by the regulator.

This is not to argue that the information should not be collected. However, because of the potential for the costs of complying with data requirements to escalate rapidly for less and less return, it is important that the AER:

- develops a clear set of objectives and a decision framework that defines what, how and why certain performance variables are measured;
- prioritises the different benchmark measures on a cost-benefit basis – differentiating between the must knows and the prefer to knows; and
- focuses initially on measures where data/data analysis tools are already available and/or where the NSPs have already developed systems for internal, regulatory or industry comparisons;

One of the biggest risks to the usefulness of benchmarking is that measurement becomes an end in itself and data is gathered (usually at a significant cost), for exploratory purposes or even just because ‘you can’.

The suggestions listed above are designed to avoid the risk of establishing a ‘grab-bag’ of data without a clear picture of how this data provides information that fits into the regulatory incentive framework and how it can be used by regulators and businesses to drive real efficiency and productivity enhancements.

DRAFT RECOMMENDATION 8.3

The Australian Energy Regulator should periodically assess the comparative performance of network business units within particular sub-regions of the National Electricity Market, where:

- ***those sub-regions share similar physical operating environments***
- ***the costs and informational requirements of doing this are not too great (draft recommendation 8.12).***

The comparisons should relate to business units within a particular business, as well as comparable business units in different businesses.

The Australian Energy Regulator should place most emphasis on comparisons of the efficiency of distribution networks in different metropolitan areas.

In addition to comments made in respect to Recommendations 8.1 and 8.2 above, PIAC supports a framework that ensures consumers receive the most ‘value for money’ from the benchmarking process. PIAC therefore emphasises the need to develop the benchmarks within an overall strategic framework with well-defined objectives and a process for assessing whether the benefits of a particular benchmark outweigh the overall costs to measure and evaluate the data.

DRAFT RECOMMENDATION 8.4

The Rules should be changed to allow the Regulator to have the discretion to initiate a three-way negotiation of a mutually acceptable settlement, involving itself, the business, and a representative and qualified customer group similar, or identical, to that identified in draft recommendation 21.3.

- ***Negotiation would only be triggered if the Australian Energy Regulator judged that the divergence between aggregate benchmarking estimates of forecast spending and the business's proposal were sufficiently narrow.***
- ***Where an arrangement was successfully negotiated using this process, the Australian Energy Regulator should not be obliged to go through the current formal draft/final determination processes.***

PIAC appreciates the concept of negotiated settlements and the potential for greater engagement of consumers in the process as part of this negotiation. However, our view is that consumer stakeholders do not yet have the experience to effectively represent the interests of all consumers in a three-way negotiation process.

PIAC suggests an evolutionary approach where consumers become progressively more engaged in the all actual determination processes and associated reviews (such as the proposed periodic WACC reviews) as their experience develops. Good governance arrangements will be critical to ensure representation of consumer interests is diverse and not weighted in favour of powerful and well-resourced interests.

There is general recognition that the issues of utility regulation are complex and it will be difficult at this time to find appropriately qualified consumers representing the range of potential interests and capable of providing strong representation and useful input into the process.

Nevertheless, there is support for the principle of consumers being directly engaged in negotiating outcomes that impact their long-term interests and progressively developing their skill to do so is sound policy.

At this early stage, therefore, PIAC suggests the AER progressively engage stakeholders in the process while retaining the existing formal draft/final determination processes for the key elements of the revenue determination. Such progressive participation will increase consumer capabilities and is, therefore, consistent with the ultimate aim of involving consumers more directly in the determination outcomes, through negotiation or advice to the AER and NSPs.

Because the outcomes of the negotiation processes will be so important to all consumers - and most particularly if (as recommended above) there is no further public consultation - it is also essential that sound governance procedures are put in place.

For instance, it is important that the consumer body does not become just a lobby group for the more powerful and well resourced and it appropriately represents all consumers, from large and small businesses, average and low income households etc. The consumer body would also need to be adequately resourced and have access to independent legal and financial advice.

DRAFT RECOMMENDATION 8.5

In any of the next rounds of regulatory determinations, the Australian Energy Regulator should not use aggregate benchmarking as the exclusive basis for making a determination. Instead, the Australian Energy Regulator should use such aggregate benchmarking results as a diagnostic tool in responding to business cost forecasts.

However, if the processes proposed in draft recommendations 8.9 to 8.11 led to sufficiently robust benchmarking, then:

- ***a business would continue to make a detailed cost proposal, but if the overall proposal were divergent from the regulator's benchmarking estimate, the onus of proof would be for a network business to provide quantitative evidence demonstrating why its cost forecast was preferable in meeting the National Electricity Objective***
- ***the Australian Energy Regulator's efficiency threshold applied to firms should be set close to, but below, the level of the most efficient firm.***

PIAC offers qualified support for this recommendation.

In PIAC's view, developing an effective suite of benchmarks is an evolutionary project. The extent to which aggregate benchmarks are used in the final revenue determination can be increased over time as the reliability and validity of the benchmarks are progressively confirmed by experience (as suggested in the Commission's recommendation). However, even if the benchmarks prove sound, changing the 'onus of proof' would be difficult under the current Propose-Response model. Moreover, it is hard to envision a time when the AER could place 'exclusive' reliance on aggregate benchmarks.

In considering this matter, PIAC took note of the approach developed in the UK by Ofgem, which has progressively enhanced its data collection techniques, associated analytical models and suite of performance benchmarks over six five-year regulatory periods.

Importantly, policy objectives and performance targets that extend beyond the one regulatory period have guided Ofgem through the last decade or so. For instance, the incentive schemes may have a small impact in one regulatory period, but this increases in subsequent periods as confidence in the measures and experience by consumers and the NSPs progresses. Ofgem's aim is to ensure the incentive mechanisms for the Distribution Network Operators (DNO) 'mimic the incentives that unregulated companies have' to improve performance.²⁶

As the benchmarking process has matured, it has also become increasingly more influential in the NSP revenue determination and in the development of the incentive schemes. It has also enabled Ofgem to selectively reduce the regulatory determination burden on enterprises that demonstrate progress on the benchmarks.

According to Ofgem, productivity has progressively improved across the 14 NSPs under its supervision, with relatively lower prices and improved performance on a variety of output measures. Greater transparency and enhanced engagement by consumers and their expert

²⁶ For example, for the 2010 - 2015 control period, Ofgem put in place stronger performance standards for connection processes, network reliability, and customer satisfaction. To the extent DNOs vary from the target performance standards, shareholder return on equity will vary from 3% to 12% (around baseline of 6.5%). See Ofgem, *Electricity Distribution Price Control Review Final Proposals*, 2009, 2.

representatives in the determination process, has allowed a shift towards more negotiated outcomes in the determination.

While the UK market differs from the Australian market in a number of ways, PIAC considers that adopting a similar long-term strategic view with clear medium term targets to lock in business performance improvements would be highly relevant to Australia.

Within this higher-level strategic approach, changes such as those recommended by the Commission (above) may be useful adjuncts to reform.

Once reasonably reliable benchmarks have been established there may be an opportunity to consider changing the ‘onus of proof’, although this will have to be carefully tested within the broader NER framework of a Propose-Respond model. Specifically:

- add to the change in onus of proof that a NSP’s explanations of variation should only be considered where the NSP can clearly demonstrate empirically derived relationships between the performance and the explanatory variables;²⁷ and
- the efficiency threshold should be set at just below the most efficient firm. PIAC agrees that setting the benchmark in this way provides an allowance for ‘regulatory error’ and, by providing a more feasible target, be a greater incentive to the majority of firms than some ‘impossible’ target.

PIAC notes here that Ofgem’s approach was to lift the performance of the whole industry by focussing on bringing the least performing businesses up to the threshold level.

We have given our most efficient DNOs ... cost allowances that broadly match their forecasts. We have reduced the allowances of the least efficient DNO’s...by up to 14%. Twenty years after privatisation, and in the middle of the worst recession in 70 years we think that shareholders, not customers, should carry the costs if this performance gap cannot be closed quickly.²⁸

This approach may have relevance in an Australian context given the very different ‘starting points’ of the various NSPs, providing that there is a clear view of what the longer term efficient performance level target of the lagging NSPs should be, albeit it is likely to take a number of regulatory determination periods to reach the position taken by Ofgem.

Perhaps such an approach would also encourage less adversarial conduct and more cooperative learning between NSPs – surely an outcome that is desperately needed in the long-term interests of consumers.

²⁷ For instance, if a NSP explains a difference in performance efficiency by reference to the number of customers per km of line, then this relationship needs to be quantified using relevant statistical analysis (eg regression analysis).

²⁸ Ofgem, *Electricity Distribution Price Control Review: Final Proposals*, 2009.

DRAFT RECOMMENDATION 8.6

The Australian Energy Regulator should develop and maintain appropriate benchmarking databases and in-house expertise for the technical analysis required to undertake sophisticated benchmarking.

PIAC supports the AER developing and maintaining appropriate benchmark databases—this is essential to the consistent but evolving approach to benchmarking that we are recommending. With respect to in-house expertise, PIAC notes that proper resourcing of the AER is clearly essential to it performing its job. However, this needs to be done in the most cost-effective way which is likely to involve a mix of in-house and contracted expertise—given the lumpy nature of regulatory processes.

PIAC acknowledges the issues raised by the Commission in its Draft Report²⁹ that in the past the AER has commissioned a variety of consultants to undertake benchmarking analysis using different techniques and with varying levels of industry knowledge and access to data. Clearly this can, and has been, a problem for the industry. It simultaneously feeds into the perception that the AER is inconsistent and does not understand the NSPs businesses while leaving the AER decisions vulnerable to appeal and being overturned by the Tribunal. However, retaining in-house expertise for technical analysis covering electricity and gas distribution and transmission has the potential to be very costly and with significant redundancy, particularly given the lumpy nature of the determination cycle.

PIAC is concerned that while a good regulatory process is essential to protect customers, the regulatory costs, which are ultimately borne by consumers, should be kept at efficient levels.

Perhaps a useful compromise would be to:

- establish some core in-house expertise around economic regulation, benchmarking etc; and
- set up a panel of external specialists who are both knowledgeable about the industry and well recognised in their particular technical field, and who can be called upon as required.

It would be the responsibility of the AER to ensure they the expert panel members are well briefed on the AER's requirements for quality analysis. In turn, the members of the panel would need to agree, in advance, to developing the skills of the AER staff, to transparent processes and to sharing of technical information.

DRAFT RECOMMENDATION 8.7

The Australian Energy Regulator should make all benchmarking input data publicly available (recognising that the businesses being benchmarked are regulated monopolies) except where the data can be demonstrated to be genuinely commercial-in-confidence.

Where the latter holds, the Australian Energy Regulator should still make the full datasets available to:

- ***independent researchers who are using the results for non-commercial purposes***

²⁹ Productivity Commission, above n 4, 154.

- ***the consumer group involved in any negotiations described under draft recommendation 8.4***
 - ***but subject to statutory requirements for non-disclosure of information predetermined as commercially-in-confidence, drawing on existing models for data protection***

PIAC supports the principle behind this recommendation as it addresses the issues of transparency and information asymmetry.

The issue is highlighted by the extent to which outsourcing to third parties or related entity parties provides a ‘shelter’ from transparency and from the investigation of real costs by the regulator and other stakeholders.

PIAC notes, in particular, the difficulty the AER has previously had with the treatment of related party profit margins and their inclusion in the RAB for the next regulatory period. Without data to establish the efficiency and prudence of charges made by a related party to the NSP (which charges were acknowledged as including a profit margin on costs for the services provided), clause 6.5.1 and Schedule 6.2 of the NER required the AER to roll the related party margins into the RAB for the next determination period. This principle of capitalised related party margins was appealed by the Victorian Minister for Energy but was affirmed by the Tribunal. However, it leaves open the opportunity for the related party to charge inflated margins while the NSP future RAB is also increased, thus increasing the overall profit to the head company.³⁰

PIAC notes that the AEMC’s Final Position Paper states that Rules will be amended to give greater discretion to the regulator to ‘preclude inefficient related party margins being rolled into the RAB regardless of whether the NSP spent more than its allowance overall.’³¹

This suggests that the AER and its consultants must have access to any ‘confidential data’ that relates to this assessment of efficiency. Care must be taken however, to ensure confidence by third parties in the confidentiality arrangements.

Outsourcing to a third party may frequently be a more cost-effective way of providing a service. However, failure to reassure third parties of the confidentiality of their data may mean that otherwise efficient third parties may be reluctant to provide competitive quotes to the detriment of consumers.

DRAFT RECOMMENDATION 8.8

When making its revenue allowance determinations, the Australian Energy Regulator should make judgments about capital expenditure forecasts that take account of any discrepancy between the Australian Energy Market Operator’s top-down peak and average demand forecasts and the aggregate of distribution businesses’ bottoms-up peak and average demand forecasts.

³⁰ See Application by United Energy Distribution Pty Limited [2012] ACompT 1, 248-313.
³¹ AEMC, above n 1, 12.

The Australian Energy Regulator should use benchmarking of the discrepancies between previous expenditure forecasts and actual outcomes by different parties to inform that process.

PIAC considers that access to independent forecasting of aggregate demand, such as that conducted regularly by AEMO, is critical to the AER's effective assessment of the NSP proposals. Demand forecasts underpin the operating and capital expenditure requirements of the businesses.

However, there are situations where NSPs may receive a commercial benefit from over-forecasting demand, particularly peak demand growth. For instance, a high demand forecast may result in an over-forecast of capital expenditure (enhancing the regulatory RAB) and/or allow the business to benefit from a post-hoc capital expenditure efficiency scheme that rewards capital expenditure lower than forecast, albeit this arose through lower demand rather than efficiency. It is vital therefore that consumers, while acknowledging the limits of any forecast, can have confidence in the independence and skills of the forecaster.

AEMO has developed considerable expertise in demand forecasting and its regular reports such as the Electricity Statement of Opportunities and the National Electricity Forecasting Reports are well-recognised as sources of independent, robust and methodologically consistent analysis on trends in average and peak demand.

At the very least, therefore, the AER should require NSPs to explain any significant differences in their forecast compared to the aggregate forecasts of demand provided by AEMO. This is not to say, however, that there cannot be sound reasons for a discrepancy in the forecasts. For instance, the NSPs can be expected to have much greater local knowledge particularly of possible business expansions.

It is appropriate for the AER to also benchmark the NSPs' previous forecasts, particularly noting significant discrepancies between an NSP's forecast and actual demand. Again, there may be good reasons for this discrepancy but it should nonetheless require satisfactory explanations and, beneficially, encourage NSPs to enhance their own forecasting capabilities for future regulatory proposals.

DRAFT RECOMMENDATION 8.9

The Australian Energy Regulator should collaborate with other leading regulatory agencies, academic experts and global commercial benchmarking specialists to enable robust meta-analysis of electricity network benchmarking results from individual country (and where credible, multi-country) studies. The collaboration should include cooperation in developing:

- ***the most meaningful measures of performance***
- ***consistent data collection***
- ***consistent reporting of results***
- ***best-practice analytic frameworks.***

PIAC believes that such collaboration would be beneficial for the AER, particularly given the noted difficulties with benchmarking utility performance and integrating benchmarking into the incentive regulation framework.

This broader reference group would also provide a greater data and methodology base to assist a more critical assessment of any claims by NSPs that performance differences/deficits against benchmarks are due to exogenous factors rather than reflecting relative performance inefficiencies.

DRAFT RECOMMENDATION 8.10

The Australian Energy Regulator should submit its major benchmarking analyses of electricity networks for independent expert peer review to establish their ongoing relevance, scientific validity, adoption of best-practice, and to gauge the degree of uncertainty in the results.

Independent review may contribute to improvement of the benchmarks, and more particularly, acceptance of and confidence in the AER's approach. PIAC considers this would be beneficial and would also contribute to the AER's defence of their determination if subject to appeal to the Tribunal.

DRAFT RECOMMENDATION 8.11

The Australian Energy Regulator should make its benchmarking results publicly available, with:

- ***accessible reporting of the results to inform consumer groups, network businesses, and others***
- ***disclosure of the importance of factors outside the control of businesses, but that may be controllable by governments***
- ***publication of the modelling strategy used to produce the results***
- ***the sensitivity of the results to changes in key assumptions***
- ***the performance of any statistical models against accepted scientific standards, including confidence intervals, parameter stability, and specification testing.***

PIAC supports the proposal to make the benchmarking process more accessible and transparent. As per our previous comments, this will also make the results more robust, improve confidence and assist the AER in defending its determination on appeal.

DRAFT RECOMMENDATION 8.12

The Australian Energy Regulator should periodically examine its detailed benchmarking methodologies and processes to assess their compliance costs for businesses and the costs for the Australian Energy Regulator. It should compare these costs with the likely benefits when determining the appropriate frequency and type of detailed benchmarking. In undertaking such assessments, the Australian Energy Regulator should consult closely with network businesses.

The Australian Energy Regulator should make all such assessments publicly available.

The overall costs of benchmarking should be subject to independent review after five years.

As highlighted previously, PIAC considers that the AER should take account of the compliance costs of more complex benchmarking and be clear about the costs and benefits.

Regular independent review of the AER's benchmarking is warranted to retain confidence in the measures and to ensure the continued positive cost-benefit balance in the interests of consumers.

However, while establishment costs may be high for the NSPs, ongoing costs to provide the data may be considerably lower, so it is important for the analysis to consider overall life-cycle costs and benefits.

5. Governance

5.1 Resourcing and capacity

DRAFT RECOMMENDATION 21.1

There should be an independent review of the resourcing and capacity of the Australian Energy Regulator to undertake all its functions, including whether there are impediments to its performance and options for improvement.

DRAFT RECOMMENDATION 21.2

The Australian Energy Regulator should have greater control over, and accountability for, the resourcing and management of its functions. It should:

- have its own separate budget sufficient to meet its role***
- submit a separate annual report of its performance***
- publicly reveal its strategy for improving its performance***
- have an independent capacity to negotiate resource sharing arrangements with a range of agencies, not just the Australian Competition and Consumer Commission***
- ensure that it establishes and retains the necessary specialist expertise to competently carry out its role, in accordance with draft recommendation 8.6***
- develop a program for regular ongoing communication and interaction with network businesses, their customers and other relevant stakeholders, with those interactions not just confined to periods of regulatory determinations.***

PIAC agrees with the Commission that it is important for the AER to be adequately resourced to carry out its functions effectively, particularly to 'apply rigorous analysis to its revenue and price

determinations for network businesses'.³² Given the impact that network price increases have had on consumer bills in recent years, the effective execution of the AER's functions in relation to those businesses has real potential to impact on electricity consumers. PIAC submits that the AER must also be sufficiently resourced to consult widely with all stakeholders as part of its price determination processes.

PIAC also agrees with the Commission that 'the resourcing and capacity of the AER to undertake its functions is currently inadequate'³³ and must be increased. While accepting an independent review of AER resourcing as a positive step, PIAC is cautious about the focus given to the AER's situation within the ACCC. In PIAC's view, structural change has the potential to divert resources away from regulatory oversight towards governance and change management. At a time when many agree that the AER is in need of greater resources to undertake its core business, PIAC believes any such activity should only be undertaken once evidence to support these activities has been gathered by an independent review.

The Productivity Commission has suggested the review will take time and has also suggested 'that some immediate "no regrets" measures should be taken' to improve the AER's independence and accountability.³⁴ However, PIAC submits that the question of funding needs to be resolved immediately if the AER is to take administrative control of its own budget and produce a separate annual report from the ACCC. While PIAC acknowledges the Productivity Commission's view that the AER's budget needs 'to be adequate to manage its functions effectively,'³⁵ PIAC believes that immediate action cannot occur until the parameters of an adequate budget are set and funds to maintain this budget are made available.

Consideration should also be given to the fact that greater independence from the ACCC may result in the loss of economies of scale. As such, negotiations with the ACCC to pay for some services may not provide sufficient funds to accommodate the Productivity Commission's recommendations for immediate measures.

5.2 AER Funding

PIAC accepts that an industry levy may need to form part of the AER's funding base, particularly if a review of resourcing identifies the need for a dramatic increase in AER resources. However, under such a scenario it would be important that the AER's source of income not compromise its independence.

The Commission acknowledges that there is a risk of a perceived lack of independence if the AER was funded by an industry levy.³⁶ PIAC similarly takes the view that any changes to the structure of the AER should cause as little disruption to the organisation as possible. PIAC's preference would be for greater efforts to be made to facilitate a cycle of continuous improvement in the AER's performance under its existing structure, rather than an extensive restructure be undertaken of this still relatively new organisation. PIAC believes that constant change is not in the interest of residential energy consumers.

³² Productivity Commission, above n 4, 691.

³³ Ibid, 692.

³⁴ Ibid, 699.

³⁵ Ibid.

³⁶ Ibid, 705.

5.3 Consumer advocacy arrangements

DRAFT RECOMMENDATION 21.3

There should be adequate ongoing funding of a single but broadly representative consumer body with expertise in economic regulation and relevant knowledge and understanding of energy markets. This body would:

- *represent the interests of all consumers during energy market policy formation, regulatory and rule-making processes, merit reviews, and negotiations with providers of electricity networks and gas pipelines*
- *subsume the role of the existing Consumer Advocacy Panel into its broader functions*
- *be funded through a levy on market participants, drawing on the approach used to currently fund the Consumer Advocacy Panel.*
- *have a governance structure that involved a board of members appointed on merit, and an advisory panel to give the board advice on the needs of the mix of customers concerned.*

PIAC welcomes the Commission's assessment that there is a need for a publicly-funded consumer body to participate in NEM policy, regulatory, rule making and merits review processes.³⁷

PIAC is one of five consumer organisations leading a project to pursue the goal of the formation of a national body under the working title of Energy Consumers Australia Ltd (ECA). The project's Business Plan (attached at Appendix A) positions ECA to represent energy consumers in national and high-level jurisdictional processes, such as rule changes and network price determinations. While jurisdictionally-focused energy advocacy will remain crucial, there are a number of long-term, market-wide reforms that could realise benefits to Australian consumers. Similarly, the complexity of energy market policy and price-setting frameworks requires access to high-level technical and legal skills that the current advocacy model struggles to provide in an ongoing manner.

It is PIAC's view that ECA could add enormous value to the current landscape of energy consumer advocacy. However, PIAC does not agree with the Commission that the body should represent all energy users, including major industry users.

Large commercial and industrial users already have the resources to participate in the more complex aspects of electricity regulation and price determinations. This occurs through both the in-house expertise of large companies and the considerable financial resources they are able to invest in consultants as part of their input into such processes. In addition, there are a number of well-resourced industry bodies that represent the interests of commercial and industrial customers, for example the Energy Users Association and Major Energy Users, both of whom made submissions to this inquiry.

Unlike major commercial and industrial users, residential and small business consumers currently have limited resources to meaningfully participate in high-level processes such as network price

³⁷ Ibid, 712.

determinations. Proposals to form a national energy consumer body are seeking to redress this gap and give some primacy to the interests of residential and small business consumers in high-level regulatory policy processes.

The interests of residential consumers do not always align with those of larger energy users. For instance, the AEMC's recent review of the value of electricity supply reliability in NSW found large users (using more than 160 MWh per year) valued reliability at \$53,300 per megawatt hour (MWh) while residential consumers valued reliability at \$20,710 per MWh.³⁸ The large spread of these figures translates to a different preparedness to pay for network investment.

The capacity of large users to invest in energy-saving systems, back up generation and their ability to pass energy costs on to their customers also signifies that these users have vastly different experiences of energy price rises. This is not to say the interests of large and smaller energy users will never converge. However, any shared interests should be worked on through collaboration rather than through the development of a national body that counts both single age pensioners and BHP as its constituents. A body of this nature is likely to face such difficulties arriving at agreed positions that its effectiveness and efficiency will be compromised.

The ECA Business Plan has been developed with the aim of adding value to the existing landscape of energy consumer advocacy namely by addressing the gap in systemic advocacy due to a lack resources and access to high level regulatory, legal and economic skills. Rather than seeking to replace jurisdictional advocacy, ECA recognises the value of jurisdictional advocacy as an invaluable foundation for higher-level advocacy and a conduit to consumers, their networks and intelligence on state-based energy policy and programs. PIAC does not support any rationalisation of energy consumer advocacy at a time when much effort is focused on increasing its effectiveness and efficiency.

Instead, PIAC supports the ECA proposal that an independent review of national consumer advocacy arrangements be undertaken in the ECA's third year of operation. This model is proposed to allow at least full two years of collaborative work between the new national centre and existing state/territory bodies. A two-year period of operation will also allow for proper consideration of how future arrangements might best be structured. Such a review would look at the co-existence of ECA and the Consumer Advocacy Panel (CAP) and plot an appropriate course for the future. PIAC believes that any changes to the role of the CAP, without the benefit of this review would be premature and may risk eroding consumer advocacy at both state and national levels.

6. Conclusion

Strengthening electricity network regulatory frameworks is undoubtedly a complex task. The number of parallel processes and reviews presently underway further complicates reform in this area. PIAC urges the Productivity Commission, and those considering its recommendations, to prioritise reforms that facilitate greater transparency and address obvious failures in the current framework. However, all reform processes related to seeking essential service provision in the long-term interests of consumers need to occur under an overarching strategic framework. While reviews can happen in a siloed manner, regulations, law and policy interrelate to produce a range

³⁸ AEMC, *Review of distribution reliability outcomes and standards – NSW workstream*, 2012, 44.

of outcomes for consumers and industry. The opportunity for these consequences to have a positive impact, through the coordination of reform processes should be harnessed.

7. Appendix A



A proposal for the establishment of a **National Energy Advocacy Organisation**

ENERGY CONSUMERS AUSTRALIA Ltd

A national energy advocacy organisation to advance the interests of Australian residential and small business energy consumers, including vulnerable groups

26 October 2012



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1 Executive Summary

This Business Plan proposes the establishment of a new national energy consumer advocacy centre, Energy Consumers Australia (ECA) – a national energy advocacy organisation to advance the interests of Australian residential and small business energy consumers, including vulnerable groups.

This Plan comprises:

1. a Business Plan
2. a Constitution (Appendix A)
3. 3 year operating and establishment budgets (Appendix B)
4. an implementation plan.

In summary this Plan proposes that the centre:

- work collaboratively with other consumer agencies engaged in energy consumer advocacy, and complement and learn from their work
- have at the centre of its Objects and Activities, advancing the interests of all Australian energy consumers, including vulnerable groups
- be named Energy Consumers Australia Ltd
- be structured as a company limited by guarantee
- be located in Sydney, and possibly co-located with the Australian Communications Consumer Action Network (ACCAN)
- commence with an establishment budget of \$476,000
- commence with a year one operating budget of \$2.5 million
- establish itself as a national energy policy, research and advocacy centre. It will not be a peak body, nor a membership organisation. In order to comply with the corporations law, there will be three Members: the Australian Council of Social Service, Consumers Federation of Australia and Choice
- be governed by 7 directors, 4 of whom must live or work in at least 4 states/territories at the one time
- comprise 9.5 FTE staff
- be funded by an industry levy.

1.1 OVERVIEW

This Plan proposes the establishment of a national energy advocacy centre, Energy Consumers Australia (ECA), with the aim of advancing the interests of all consumers in the Australian energy sector.

The need for a national energy advocacy body has been identified and supported by consumer energy advocates, by independent analysis, including from the Productivity Commission, and by national energy regulators and representatives of government.

At present, disparate advocates for residential and small business, low income and disadvantaged energy consumers contest issues alongside well-resourced representatives from the electricity generation, network and retail sectors. Each of these industry sectors has national peak bodies, as do large-scale energy consumers.

Energy market decision-making processes are often complex, highly technical and time intensive. The establishment of ECA would allow representatives of small-scale energy consumers to engage with these processes more effectively, giving greater strength, depth and co-ordination to the consumer voice.

It is proposed that ECA be funded by the energy industry. While small in size, the national centre would sit within the broader network of energy consumer advocacy organisations and projects. This is consistent with the approach agreed by CEOs of community energy advocacy organisations in April 2012.

This Plan argues that its value would be repaid many times over through more effective consumer representation in energy market processes, through a modest cost passed through to consumers from funding the national centre.

Available data from the Australian Energy Regulator (AER) indicates that there are just under 9.2 million residential electricity customers in the National Electricity market (NEM) and WA as of June 2011.¹ Using just this figure, the cost to residential electricity customers for the new Energy Consumers Australia will be in the order of 28 cents per household per year.

It is proposed ECA's annual budget would be \$2.5m with establishment costs of just over \$476,000. By way of context, total expenditure in the National Electricity Market totals approximately \$23 billion per annum². The impact of certain electricity network revenue decisions successfully appealed by the industry over a five-year period has been estimated at \$3.6 billion³, a process in which consumer advocates have found it notoriously difficult to participate. It is clear that even a small improvement in the effectiveness of energy consumer advocacy into these processes will result in a benefit to all energy consumers, which far outweighs the costs of the proposed ECA budget.

1 Non residential electricity and gas consumer figures are not available from the AER

2 Simon Orme, James Swansson, Eli Hefter, Scoping system for a consumer energy data access system (CEdata), August 2012, p. viii

3 Professor George Yarrow The Hon Michael Egan Dr John Tamblyn, Review of the Limited Merits Review Regime, Stage One Report, 20 June 2012, p. 19

Establishing the ECA to work collaboratively with the existing network of funded consumer energy advocates and projects recognises the critical contribution of jurisdictional and sectoral advocates to often complex processes, and the benefits that can be gained through coordination of strategic projects and advocacy.

This model is proposed to allow at least full two years of collaborative work between the new national centre and existing state/ territory bodies, with a view to an independent review of national consumer advocacy arrangements during its third year of operation.

Two years will also allow for proper consideration of how future arrangements might best be structured. This assumes that areas of uncertainty such as the National Energy Customer Framework (NECF) will be clarified by then.

Such a review would look at the co-existence of ECA, the Consumer Advocacy Panel (CAP), and the National Energy Roundtable.

Energy Consumers Australia Ltd will be a company limited by guarantee, located in Sydney. Sydney has been chosen as the location for ECA, as the Sydney based Australian Communications Consumer Action Network (ACCAN) is also located there. Co-location with ACCAN is being discussed, providing an opportunity for economies of scale and sharing of expertise. The ECA Budget at Appendix B however does not assume that co-location will actually occur. It would not be prudent to assume this, and so the ECA budget makes provision for individual set-up separate from ACCAN. In terms of the relationship with ACCAN if co-location was to occur, the organisations would operate separately, except for some possible shared back office. The organisations would have separate signage and corporate livery, but leverage off ACCAN's existing expertise and knowledge, and cross fertilise across the advocacies.

The proposed Constitution of Energy Consumers Australia Ltd is at Appendix A.

1.2 BACKGROUND

The obvious gap in national advocacy for Australian energy consumers has been discussed for some time now.

Two main areas of activity have been undertaken:

- Research reports
- The National Consumer Roundtable on Energy, commonly referred to as the Roundtable

The Roundtable is a Consumer Advocacy Panel funded collective of consumer advocacy organisations, which have met on a regular basis since 2005 for the purpose of:

- development of joint work and positions on matters of national interest
- development and formation of relationships with academics and expert speakers from government and industry, identifying synchronicity and interactions between energy and social policy and working to join these up
- information sharing
- networking
- coordination and development of advocacy positions
- direct engagement with stakeholders in the energy industry

- learning from approaches in other jurisdictions
- planning and co-ordination of stronger submissions
- joint submissions and press releases

The organisations, which have participated in, and/or contribute to, recent Roundtable work are attached as Appendix C.

While the Roundtable has operated as a cohesive consumer advocacy network, it has not been able to provide a coordinated and effective national voice across all areas of national policy development requiring consumer input.

The Roundtable strengths have been to develop a framework for good collaboration between state-based groups which has included a shared understanding of the diversity of issues amongst states. It is a framework which has strengthened the quality of advocacy, both formal and informal, and also one which allowed strategic coordination for best use of limited resources as well as some joint positions on issues of significance. This is not always reflected in one single submission, but there is often great consistency amongst a number of individual submissions going to regulators as a result of prior discussion and collaboration amongst groups.

Roundtable participants have been able to observe, and have been concerned by, the gaps in advocacy on various national interests, but they have not collectively or individually been resourced to address these gaps.

The Roundtable has held discussions about the need and support for a national energy advocacy body, including a specific day workshop in April 2012 to consider the review of consumer advocacy in Gordon Renouf's Making Energy Markets Work for Consumers Report (the Renouf Report) of November 2010.

At that time a majority of participants considered model D in the Renouf Report to provide an appropriate structure to address the gaps in national advocacy, while maintaining the capacity of state-based energy advocacy groups.

The Renouf Report describes Model D as:

"A small national centre at the centre of a broader funded network".

This Business Plan has been auspiced by 5 lead consumer agencies:

- the Alternative Technology Association.
- the Australian Council of Social Service (ACOSS)
- the Consumer Action Law Centre Victoria (CALC), and
- the Consumer Utilities Advocacy Centre Victoria (CUAC)
- the Public Interest Advocacy Centre NSW (PIAC)

A national working group was set up, through a national expression of interest selection process, run by an independent external facilitator, Fiona McLeod.

The Working Group members are:

Choice	Matt Levey
Consumer Action Law Centre Victoria	Gerard Brody
Public Interest Advocacy Centre NSW	Ed Santow
Qld Council of Social Service	Linda Parmenter
South Australian Council of Social Service	Ross Womersley
Total Environment Centre	Mark Byrne
Uniting Care	Stella Avramopoulos
West Australian Council of Social Service	Brent Savage.

This Working Group and the external facilitator have developed the vision and purpose of the ECA, in consultation with key stakeholders, and recommended the Business Plan to the five lead agencies who approved it for recommendation to government.

For the ECA to work effectively, continued funding of the broader energy consumer advocacy network is considered critical to the success of Energy Consumers Australia Ltd. It will provide a mechanism for different jurisdictions and customer segments to input into the development of national policy and advocacy positions.

It will also ground the decision making of ECA in the experiences of consumers and their representative groups.

It will give legitimacy to ECA and allow ECA to build on the skills and knowledge of groups which have significant jurisdictional (and in some cases national) experience and connections through members, or direct client contact with the needs of consumers on the ground. This will ultimately achieve better advocacy outcomes for consumers.

1.3 OBJECTS

Energy Consumers Australia's Objects are to:

- advance the interests of Australian residential and small business energy consumers, including vulnerable groups, through national advocacy;
- promote secure access to affordable, reliable, safe, and environmentally sustainable energy services for all consumers;
- develop and amplify a strong, coordinated voice for Australian consumers, through collaborative work with organisations engaging in energy advocacy, and to represent and advocate on behalf of Australian consumers to Government, regulators and the energy industry;
- facilitate access and disseminate information and tools to consumers, consumer and welfare organisations;
- identify and redress systemic disadvantage and market failure, to promote a fair energy market, recognising that energy is an essential service which contributes to wellbeing and the ability to participate in the economic and social mainstream, and recognising the important correlation between social and energy policy; and
- undertake research on and advocate on behalf of energy consumers on energy law and regulatory reform.

1.4 ACTIVITIES

Energy Consumers Australia's activities, described generally in the Constitution, and in more detail later in this Plan, are to:

- advocate on behalf of all Australian residential and small business energy consumers and to governments, regulators, and industry through:
- participation in regulatory and co-regulatory activities;
- contribution to the development of policy relevant to energy consumers;
- collaborative work with consumer and welfare organisations engaged in energy advocacy in each Australian state and territory, including consumer organisations working to assist low income and vulnerable energy consumers;
- conduct research on its own initiative and on issues identified by state/territory based energy advocacy organisations;
- contribute to the development of and compliance with industry codes, standards and guidelines for the energy industry; and to identify areas where industry and/or regulatory response is necessary;
- facilitate forums, consultations and meetings to promote engagement and priority setting with consumers, consumer groups and representatives;
- support, train and enhance the capacity and effectiveness of consumer representatives;
- build and strengthen alliances that favour consumer interests;
- engage in public discussion of energy issues, through media and campaigns;
- establish and maintain a knowledge base of internal and external technical expertise and research;
- keep adequate data on national energy consumer issues, for reporting purposes and to identify and redress issues which negatively impact energy consumers.

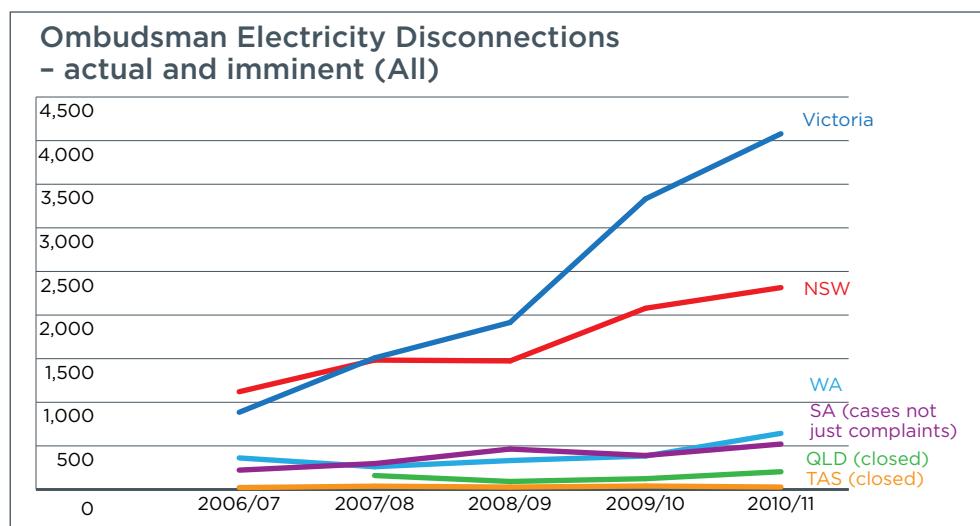
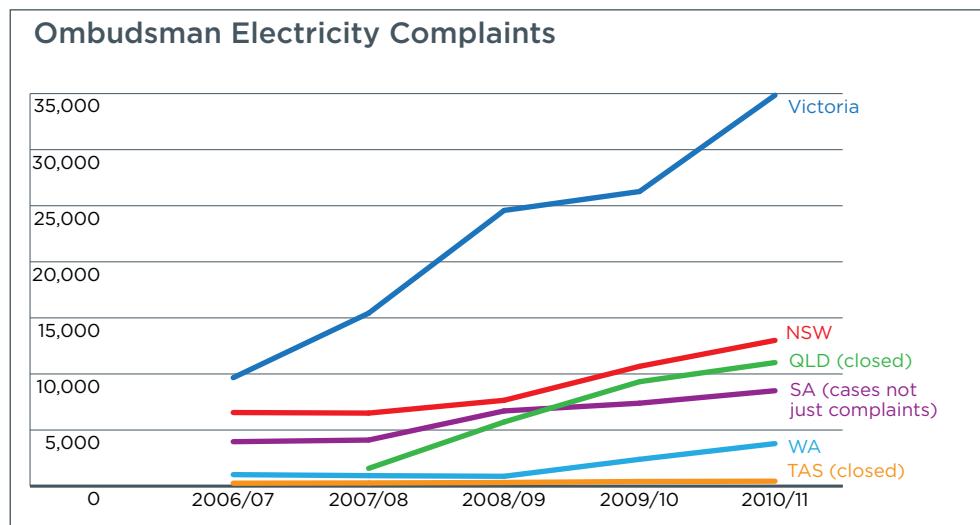
2 Situational Analysis

A CHANGING ENERGY MARKET

A national energy market has been progressively introduced since 1995.

While there were changes in the regulatory regime in the late 2000s, it has remained substantially similar over that period. However, during the same period there have been substantial changes in the Australian and global energy markets in response to the following drivers:

- Electricity bill increases averaging more than 50% nationally since 2007, with the single largest driver on a national basis increased investment in energy network infrastructure.
- Resulting from these increases, growing incidence of ‘bill shock’, energy poverty and call on hardship programs.



- Higher customer churn rates, especially in Victoria, with widespread evidence of more proactive, and in some cases, intrusive and misleading marketing, including through door-to-door sales and commercial switching and price comparator services.
- Changes in consumer behaviour, including large increases in peak demand driven by higher air-conditioning loads on summer afternoons and evenings.
- Technological changes, many of them transforming the relationship of consumers to their energy usage and also presenting significant challenges in terms of consumer protection, including the voluntary and mandatory introduction of smart meters and the phasing in of time variable prices.
- The inconsistent nature of the intended policy of privatisation and competition policy in the energy markets, with a mixture of competitive and monopoly sectors of the supply chain; government and private ownership of assets; and only partial implementation of the National Energy Customer Framework (NECF), with retail price regulation being retained in some governments' hands.
- Impacts of severe weather events, including power station shut-downs caused by both drought and flood; the impacts of bushfires on poles and wires and heatwaves.
- The introduction of the Renewable Energy Target in 2001 and the Clean Energy Future legislation in 2010.
- The emergence of new sectors including private and precinct co- and tri-generation systems (e.g. City of Sydney) and community renewable energy projects (e.g. Hepburn Wind), and the shift towards decentralised energy generation and storage technologies, including electric vehicles.

In short, the main challenges currently facing the Australian electricity and gas markets are to constrain retail price increases and to transform the electricity network from its traditional 'hub and spokes' model to a two-way system with greater consumer participation and (in the short term) intermittency.

Recent statements from Federal and State Governments, along with the progress of major reviews, have made it clear that consumers will experience significant changes in the way they engage with energy consumption in the near future. Processes including ongoing smart meter roll-outs, staged retail price deregulation and the phasing in of time variable pricing, and access to an unprecedented amount of consumption data will present opportunities and also many challenges to ensure that consumers are properly protected and have full access to the benefits of these changes. As experience in both Australia and overseas has shown, a lack of consumer engagement and confidence would undoubtedly see many of these processes stall.

These energy market changes, which are likely – in spite of some consumer resistance – to accelerate in future, require sophisticated research, educational and advocacy responses from consumer advocates, which can best be facilitated by a national body coordinating and building on the work of jurisdictional and specialist groups.

2.3 NEED FOR NATIONAL ENERGY CONSUMER ORGANISATION

Consumer research

The Renouf Report concluded that there is a need for increased resources for national energy consumer advocacy in Australia. The report found:

- There is a lack of resources to undertake all the advocacy required to advance important consumer interests.
- Not all formal advocacy that is required is undertaken. The formal advocacy that is undertaken requires more coordination and greater access to technical skills.
- The need for increased resources for formal advocacy is the tip of the iceberg. Advocates need a much greater capacity to research the needs of a more diverse range of consumers, and to explore the costs and benefits of potential changes and their likely impact on the market and consumers, including, but not only, through greater analysis of overseas experience.
- Case studies of effective advocacy and a number of evaluations and reports demonstrate the impact that advocacy has in securing change in consumers' interests.
- Other indicators of the likely need for increased resources for advocacy include substantial increases in the numbers of complaints handled by the energy ombudsman schemes and the ongoing dynamic and uncertain nature of energy regulation, with the full impact of a large number of recent changes not yet known and many more flagged.

The Renouf Report also identified a number of benefits from increased resourcing of energy consumer advocacy, including:

- capacity for consumer advocates to respond to a greater proportion of the formal processes initiated by decision-makers (whether through submissions, building capacity for local communities to engage in distribution company proposals to regulators, or participation in working committees and similar).
- capacity for advocates to provide higher quality input to all formal processes.
- capacity for advocates to respond to a greater range of issues, including issues, which are currently engaged with less frequently, due, for example, to their complexity, the requirement for specialist knowledge and/or their relative remoteness from the issues experienced directly by consumers.

- ability of the advocacy system—through increased research and better engagement with consumers, service providers and other local organisations—to identify additional issues facing consumers, to identify issues at an earlier stage, and to undertake ‘proactive’ advocacy, to have these issues taken up by policy makers.
- increased capacity of advocates to lobby more effectively for decision-makers to include consumer interests at an earlier stage in the decision-making process.
- efficiencies flowing from greater coordination of advocacy, and removal of duplication.
- increased access to technical expertise, whether through staff appointments, formal arrangements with university centres and/or capacity to retain professional consultants.
- the potential to develop a centralised repository of research and other knowledge that would be accessible to consumers, consumer advocates and others on an ongoing basis.
- overall, an increased capacity to respond to the breadth and complexity of issues in the energy market.

PRODUCTIVITY COMMISSION ANALYSIS

The Productivity Commission has found that there are a number of clear and compelling reasons why there is a need for effective consumer advocacy in consumer markets:

*There is a **prima facie** case for governments to provide some support for [consumer advocacy]. Given the often large number of constituents that consumer advocacy bodies represent, ‘free rider’ problems are likely to be a greater impediment to private funding than in the business sector. Indeed, it is clear that resourcing constraints have sometimes prevented advocacy bodies from participating in policy development, even when requested by government to do so ... the Commission’s judgment is that there would be a net benefit to the community from an increase in the currently low level of public funding for these advocacy functions⁴.*

The Productivity Commission recently reinforced its view that there is an urgent need for governments to support consumer advocacy and research⁵.

⁴ Productivity Commission, *Review of Australia’s Consumer Policy Framework*, 30 April 2008, page 49.

⁵ Productivity Commission, *Australia’s Urban Water Sector*, 31 August 2011.

VIEWS OF REGULATORS

The Australian Energy Regulator (AER) has recently stated its view that there should be a national energy consumer advocacy body:

The transition to a national framework for the regulation of the Australian retail energy market and initiatives to increase consumer engagement in network revenue regulatory processes will only increase the scope of further advocacy work. The AER believes that these developments highlight the need for the establishment of a well-resourced, national independent consumer advocacy body. The establishment of this body would ensure that customers' views can be represented effectively in the new regulatory environment and the impacts upon them are appropriately considered and reflected in decision-making⁶.

The Australian Energy Market Commission (AEMC) has also indicated strong support for a national energy consumer body:

The Commission is of the view that a national energy consumer peak body should be established. Such a body would facilitate more effective consumer engagement by improving the capacity of consumers to participate in regulatory processes and the issues covered in those processes. The introduction of the National Energy Customer Framework supports further the need for a national peak energy consumer body.

This is consistent with the Productivity Commission's previous recommendation for a peak national consumer body. A major benefit identified is "higher quality consumer input into policy making, including through better access to the views of frontline consumer agencies".⁷

The Australian Energy Market Commission (AEMC) has recently re-stated this support for increased consumer advocacy resources, and clarified the need for distinctive jurisdictional views to be maintained:

The AEMC would be supportive of initiatives to improve the ability of consumers and their representatives to participate further in the regulatory and other processes relevant to energy market development. We consider it is important that such initiatives are undertaken in a way that seeks to ensure that the broad range of consumers' interests are represented while distinctive State based views are still represented.⁸

⁶ Australian Energy Regulator, *Submission to Senate Standing Committee on Electricity Prices*, September 2012, page 13.

⁷ Australian Energy Market Commission, *Directions Paper—National Electricity Amendment (Economic Regulation of Network Service Providers) Rule 2012*, March 2012, page 155.

⁸ Australian Energy Market Commission, *Submission to the Senate Select Inquiry into the Electricity Prices*, September 2012.

The Productivity Commission's Electricity Networks Regulatory Frameworks Report says:

The overarching objective of the regulatory regime is the long-term interests of electricity consumers. This objective has lost its primacy as the main consideration for regulatory and policy decisions. Its pre-eminence should be restored by giving consumers much more power in the regulatory process - Australian governments should create an industry-funded representative energy consumer body with the expertise to be an effective participant.

There are strong grounds for improving information flows to consumers – such as through the public availability of benchmarking results, and information on the various cost drivers of electricity bills.

Equally, there is merit in a single consumer body with expertise in the economic regulation of energy markets and, accordingly, the capacity to understand some of the complexities of the NEM and its investment and cost drivers. The body would need to represent all consumer groups, consistent with the objective of the National Electricity Law to promote the long-term interests of consumers.

This body could engage with NEM institutions in their processes and would give them the scope to participate in the negotiation of regulatory determinations with network service providers, a model that has apparently worked well in the United Kingdom and the United States. It would represent all household and business consumers – and not any particular constituency – and it would be headed by people selected on a merit basis. An advisory group representing the many diverse consumer groups would provide (non-binding) advice to the body.

As for some other institutions in the NEM, the body would be financed through a small ongoing levy on market participants (effectively amounting to a consumer levy). In addition to its major role as an informed and capable body with economic expertise.”

The Rule Change Committee in its recent Briefing to Minister Ferguson on negotiated Settlements in the Regulation of Network Service Providers has said:

We strongly support a much greater allocation of funding for consumer advocacy. It is particularly frustrating for energy users to observe the unlimited resources available to network service providers to promote their interests in regulatory processes, knowing that such resources are being recovered from energy users through regulated charges. We suggest that there is a very strong case to address this imbalance. We also believe that some sort of NEM-wide non-exclusive energy-user advocacy and research institution could improve energy user representation.

The Chairman of the Australian Competition and Consumer Commission (ACCC) also recently stated in relation to the regulation of electricity networks:

There needs to be a well funded consumer body with appropriate expertise that can engage in each step of the regulatory process to ensure that the voices of small users are heard.⁹

The Senate Select Committee Inquiry on Electricity Prices currently in progress, makes specific mention of its desire to investigate:

d. ii the opportunities for improved customer advocacy and representation arrangements bringing together current diffuse consumer representation around the country, and

d. iv the adequacy of current consumer information.....

In a recent speech to the Energy Policy Institute of Australia the Prime Minister made clear she wanted “more empowered consumers”.

The Australian and New Zealand Energy and Water Ombudsman Network (ANZEWON) says in its letter of support:

We are aware that there are some strong and active consumer groups at a state level, but there has not been a dedicated national consumer voice for energy issues at a critical time when we are moving to a national consumer protection framework to complement the national energy market.

⁹ Rod Sims, Speech—*The ACCC at work: consumers, competition & regulatory issues*, John Curtin Institute of Public Policy, 13 September 2012.

2.4 HOW ENERGY CONSUMERS AUSTRALIA WOULD ADD VALUE

INCREASED CAPACITY TO PROVIDE A VOICE ON ENERGY ISSUES

As a new national centre, Energy Consumers Australia will provide a strong, coordinated voice for all Australian residential and small business energy consumers, who can speak authoratively with industry, regulators and government. It will employ a small staffing base, with expertise in social leadership, policy, advocacy, and campaigns, communication. It will be able to employ a range of strategies (including, but not limited to, participating in formal processes) to advance the interests of energy consumers.

It will also employ two way communication methods with agencies and advocates currently expert in the energy space, recognising that the greatest effectiveness nationally will be to leverage knowledge and expertise already built up over many years across Australia.

The ECA will also be able to participate in stakeholder committees, stakeholder groups, working groups and other energy market committees and reference groups, adding value in that way.

NEW CAPACITY TO WORK ON GAS ISSUES

ECA will fill the identified need to better represent energy consumers in relation to national gas policy, so adding enormous value to the small amount of gas market advocacy currently undertaken by small scale energy consumer advocates.

INCREASED CO-ORDINATION OF ADVOCACY

This Plan proposes maintaining the level of resources allocated to other consumer advocacy organisations, and for Energy Consumers Australia to leverage off those skills and resources for 2 years to begin with. After two years, a review of consumer advocacy arrangements is proposed. In addition to acting on its own behalf, Energy Consumers Australia will:

- identify issues and act as an expert resource for other advocates;
- devise mechanisms for consultation with general consumers across Australia, including but not limited to:
 - » annual energy consumer surveys
 - » rural and regional engagement with local communities during the design of electricity network proposals affecting those communities
 - » information on a website and through other electronic means.
- support information-sharing and skill enhancement;
- facilitate and participate in the National Consumers Roundtable on Energy¹⁰; and
- develop a research agenda after consultation with stakeholders, and supervise and coordinate ECA's approved research agenda.

¹⁰ It is proposed that the current CAP allocation for administration of the Roundtable move to ECA. ECA's Budget does not include the cost of facilitation of the Roundtable.

INCREASED ACCESS TO TECHNICAL SUPPORT TO UNDERTAKE ADVOCACY

A significant proportion of Energy Consumers Australia's budget would be allocated to enable the centre to purchase additional technical assistance for itself, which can also be shared with other advocates. High-level technical advice from fields such as engineering, regulatory economics would be obtained to positively influence market regulation developments. Technical expertise is particularly important for participation in ongoing network revenue determinations (see below key priorities 4.2).

BETTER PREPARATION FOR NECF

ECA will play a pivotal role preparing for implementation of the National Energy Customer Framework. If the Centre can establish itself before 1 July 2013, it will enable a national focus on NECF and its impact on energy consumers. It will be important for ECA to advocate for all consumers within and outside the NEM, and to work collaboratively with states and territories to be able to delineate state from national energy issues, and aim to effectively manage state from national.

INITIATION AND RESPONSE TO REQUESTS FOR RULE CHANGES

Thus far, there has been no real national residential/ small business consumer voice in the area of Rule changes. This is one of the identified gap areas for Australian advocacy and one which the ECA plans to fill. ECA will also work to assist other consumer advocates in their efforts to explore Rule Change initiatives. This would include training of those advocates.

MORE EFFECTIVE PARTICIPATION IN MARKET REVIEWS

A national ECA, working with jurisdictional and sectoral advocates, will increase the capacity of consumers to effectively participate in various market reviews as they arise. The establishment of national consumer policy expertise will be a new value add.

WIDER AND MORE COORDINATED NATIONAL COMMUNICATION WITH EXTERNAL STAKEHOLDERS

The creation of a national energy advocacy centre will enable more coordinated communication about energy consumer issues, throughout the country. The centre's work will be grounded in the activities and views of state/ territory advocates, but there is no question that the establishment of a national body, through which many views may be expressed, is a great step forward.

Many key stakeholders have expressed a wish for a national body with whom they can deal, knowing that body has its fundamental premise, working with all other consumer agencies and advocates to develop national policy positions and a national knowledge base.

INITIATION AND PARTICIPATION IN LAW AND REGULATORY REFORM

Good law and regulatory reform is informed by good consultation with all key stakeholders. The ECA will be in a position to identify areas for reform, in its role to actively seek information from around Australia about energy consumer experiences. ECA will also be in a good position to actively participate in reform.

UNDERTAKING RESEARCH

A key gap at present, which the ECA aims to fill, is the absence of a truly national body of research, which government, regulators, consumer advocacy groups and industry can refer to and rely on, in their strategic work.

Effective energy consumer research can mean the difference between a positive and a negative regulatory outcome for consumers. It is vital that effective decision-making is informed by the experiences of all energy consumers.

SERVICE TO CONSUMERS

The ECA will draw on the casework and direct experience of advocates around Australia. It will carry out an intelligence gathering and referral function by first of all learning from direct customer contact with the ECA. Direct consumer calls to the ECA will be mined for information about what the issue is for the consumer, prepare for advocacy as needed, and then the caller will be properly referred to a relevant body, such as an Ombudsman or locally-based advocate.

ACT AS A CLEARING HOUSE

One of the significant value adds that ECA will provide is the first national energy advocacy repository of information from around Australia. This knowledge bank will draw from current jurisdictional and sectoral advocates and agencies, as well as work done under the ECA's own initiative.

This knowledge bank will be easily accessible to the public, to government, industry, and regulators. Importantly it will be a living, current knowledge bank, bring together disparate sources of information and materials into the one national access mechanism, and creating "memory" around the very complex issues facing energy consumers.

EDUCATION OF CONSUMERS

National energy literacy will be a main focus of the ECA's work and aims to build consumer capacity in a more coordinated way than at present. The centre will use as many and varied education tools and techniques as are effective and affordable to assist consumers to understand the complexities of the energy market and their place and power in that market.

FACILITATING THE LINK BETWEEN ENERGY AND SOCIAL POLICY

While it is not possible to estimate the precise value that Energy Consumers Australia would provide to the Australian economy and society, considering the evaluations of many consumer agencies' research and project work, and the current inability of consumer advocates to reach key areas, the value of ECA to end use consumers and society will inevitably outweigh the costs many times over.

The models of consumer advocacy proposed by the Renouf Report, and the model proposed by this Business Plan, aim to overcome the most commonly identified weaknesses with the current system, as identified by that report:

- Limited capacity to provide a voice on energy issues
- Need for increased coordination of advocacy, particularly on national issues
- Insufficient access to technical support to undertake advocacy.

2.5 ENERGY CONSUMERS AUSTRALIA AND THE SYSTEM DESIGN PRINCIPLES

The *Making Energy Markets Work for Consumers Report* identifies nine principles for an effective energy advocacy system (it also identifies an additional seven good practice principles). These principles are listed below, together with an explanation as to how the establishment of Energy Consumers Australia will contribute to these principles, as well as an outline of the Roundtable's strengths and gaps.

Principles		Existing Roundtable and broader consumer and welfare advocacy network	Proposed Functions of Energy Consumers Australia
The advocacy system is strategic and able to allocate resources to the activities most likely to advance energy consumers' interests, including proactive and response advocacy as required.	Strengths	<p>Working expertise and experience in past and emerging consumer and welfare advocacy issues.</p> <p>Expert working knowledge of local/jurisdictional issues and a shared understanding of the diversity of issues amongst states.</p> <p>Strong collaboration between groups to develop a shared understanding of the diversity of issues, and good level of consistency amongst submissions.</p>	<p>The Board of ECA will set the strategic direction for ECA, including an annual work plan after consultation with stakeholders.</p> <p>The management of ECA, particularly the CEO, together with policy and advocacy staff, will prepare and monitor more detailed work plans. ECA will maintain consistent engagement with government, regulators, ombudsmen, and the broader network of energy consumer and welfare advocates to assist in identifying areas of national priority.</p> <p>Maintain an accessible online register of formal advocacy required, due dates, and who is working on what.</p> <p>Gather and build an easily accessible library of research data for state/territory based organisations to draw upon for formal advocacy.</p>
	Needs	<p>'Helicopter view' of reform agenda and identification of which organisations are covering different policy development areas.</p> <p>Some areas of national policy development are not addressed due to lack of resources, coordination or technical skills.</p> <p>Unnecessary duplication of research effort amongst organisations which are working on the same things.</p>	

Principles		Existing Roundtable and broader consumer and welfare advocacy network	Proposed Functions of Energy Consumers Australia
Advocacy is based on a robust connection to consumers (whether through membership, casework, service provision, research or otherwise)	Strengths	<p>Strongly connected to consumers through provision of casework and services to the community.</p> <p>Ability to leverage existing networks and services to collect and disseminate information directly to consumers.</p>	<p>ECA will have a strong connection with consumers, primarily through close working relationships with the broader network of energy consumer advocates who represent energy consumers through different means (including membership, casework, service provision).</p> <p>These relationships will be through regular collaborative work, research, submissions, reference groups and committees, including the National Consumer Roundtable on Energy.</p> <p>ECA will also undertake a significant annual survey of consumers. This survey will provide ECA with direct insight into the views and preferences of consumers about energy services.</p> <p>ECA will seek to develop and strengthen ties directly with consumers over time.</p>
	Needs	<p>National coordination and clearing house of consumer experience and research, across all states and territories, into a national picture.</p> <p>National information base of consumer experience and issues, derived from state/territory bodies.</p>	
The advocacy system is able to build and sustain expertise, interest and engagement in local-level organisations	Strengths	<p>Established expertise and engagement in a range of policy areas. Already have established relationships with local level organisations, delivering capacity building.</p>	<p>ECA will leverage off the broader network of energy consumer advocates nationally, and draw on their expertise, interest and engagement.</p> <p>ECA will seek to facilitate the development of relationships with local and grass roots consumer organisations, both through other energy consumer advocates and directly.</p> <p>Develop training materials for delivery to local level organisations.</p> <p>Maintain a library of capacity building materials (presentations, fact sheets etc) that have been produced by other advocates on various topics.</p> <p>Produce a regular bulletin on advocacy issues for energy consumers for dissemination by the network.</p>
	Needs	<p>Lack of resources to develop materials and deliver training or general updates on current issues.</p> <p>Unnecessary duplication of work on developing materials amongst advocacy organisations.</p>	

Principles		Existing Roundtable and broader consumer and welfare advocacy network	Proposed Functions of Energy Consumers Australia
<p>The advocacy system includes the capacity to support the informed voices of diverse energy consumer interests reaching decision-makers:</p> <ul style="list-style-type: none"> • the advocacy system uses a principled approach to balance the interests of different groups or classes of energy consumers; • the advocacy system supports advocates representing different interests to exchange views, explore common positions and, where appropriate, coordinate advocacy. 	<p>Strengths</p> <p>In depth understanding of the interests of different consumer and welfare groups.</p> <p>Ability to develop policy and advocate for particular consumer groups.</p> <p>Good knowledge of the diversity of views across advocacy networks, and establishment of common positions for particular areas of reform, where possible.</p> <p>Needs</p> <p>Ability to coordinate more broadly across the network to enrich policy positions.</p> <p>Coordination to facilitate the development of common positions on emerging issues or policy gaps.</p> <p>Centralised record of the diversity of positions taken by various advocates on different topics, and identification of gaps and opportunities.</p> <p>Analysis of diverse policy positions, consultation with all advocacy stakeholders nationally, and development of balanced positions in the best interests of all energy consumers in Australia.</p> <p>Centralised information on 'go to' people in the advocacy network for various energy advocacy topics.</p>		<p>ECA, representing all residential and small business consumers of energy, recognises that consumer interests can be diverse.</p> <p>ECA will seek to balance and align the interests of different consumers, and where differences continue, will represent the different views, so that these are known to stakeholders and decision-makers.</p> <p>ECA will not seek to represent one group of consumer interests over another.</p> <p>ECA will work with the broader network of energy consumer advocates, including those representing specific groups such as low-income consumers, older consumers, consumers from non-English speaking backgrounds, regional and rural consumers as well as small business consumers (among others). However the focus of ECA is <u>all</u> consumers - "average Australians".</p> <p>ECA will identify coalitions and seek to work collaboratively with the various advocates representing these different consumer interests.</p> <p>Facilitate advocacy processes (such as the Round Table and other groups) to explore, record, analyse and synthesise the diversity of views and opportunities for common policies and advocacy.</p> <p>Maintain an online library of policy positions in the advocacy network, and a register of 'go to' people for various energy advocacy topics.</p>
<p>The advocacy system has a credible, effective and responsive national voice where required.</p>	<p>Strengths</p> <p>History of individual organisations (and some collaborative work) providing credible and effective inputs into national advocacy around various reforms and issues.</p> <p>Roundtable members have expert working knowledge of consumer group, regional and jurisdictional issues.</p> <p>Needs</p> <p>Coordination of consultation to develop national policy positions, and preparation of submissions in response to emerging national energy issues and reform.</p> <p>Centrally accessible research to assist with preparation of individual submissions.</p> <p>Research and preparation of written submissions.</p>		<p>ECA will provide a robust national voice for consumers, and seek to coalesce consumer voices on national issues.</p> <p>ECA will acknowledge and provide space for diverse consumer voices.</p>

Principles		Existing Roundtable and broader consumer and welfare advocacy network	Proposed Functions of Energy Consumers Australia
The advocacy system ensures that necessary advocacy at a State/Territory level is supported.	Strengths	Strong track record of successful jurisdictional advocacy, high level policy and advocacy skills	ECA will draw on and support the broader network of energy consumer advocates, including those representing jurisdictional and sectoral interests as well as those representing specific groups or consumer interests.
	Needs	Assistance in capturing the knowledge, research and policy work undertaken by individuals and organisations and making it available to the rest of the advocacy network. Coordination of the National Consumer Roundtable on Energy to facilitate sharing information and strategies.	ECA will facilitate the National Consumer Roundtable on Energy and actively participate in this forum. This will support jurisdictional and sectoral level advocacy through the sharing of information and advocacy strategies among consumer representatives. ECA Directors must come from at least 4 states/ territories at any one time.
The advocacy system ensures that relevant local and State/Territory issues that impact on consumers and energy markets are available to national decision-makers through consumer advocacy.	Strengths	Strong track record of successful advocacy based on locality, consumer group or reform topic/technology. High level skills and organisational memory of various individuals working in existing advocacy organisations.	Through its ongoing and robust working relationships with the broader network of energy consumer advocates, ECA will identify priority consumer issues that should be addressed nationally.
	Needs	Lack of resources and/or mandate to drive local and state/territory based issues to national decision makers.	
The advocacy system includes or has effective access on technical issues, including engineering issues, regulatory economics and environmental issues.	Strengths	Some skills and knowledge in various organisations throughout the advocacy system	ECA will employ a skilled staffing contingent, including those with expertise in law, economics and public policy.
	Needs	Collection and publication of existing research work to make it available to all network advocates. Lack of (or patchy) ability to access high level technical resources to engage in major advocacy projects (such as Rule changes and distribution price re-sets)	ECA has budgeted for, and will maintain, resources to be able to purchase technical knowledge through consultants, with particular relevance to economic regulation of networks and other technical areas.

Principles		Existing Roundtable and broader consumer and welfare advocacy network	Proposed Functions of Energy Consumers Australia
<p>The advocacy system is efficient, effective and accountable:</p> <ul style="list-style-type: none"> • the advocacy system includes incentives and support for effective collaboration among advocates; • the advocacy system has the capacity to generate, collate, store and retrieve relevant data and research; the advocacy system possesses a strong corporate memory. 	Strengths	Good level of formal collaboration through Roundtable, good level of informal collaboration on joint projects and submissions.	ECA will work to support locally based energy consumer advocates, including through facilitating the National Consumers Roundtable on Energy.
	Needs	Centrally available storage of research reports, submissions, advocacy tools, documents and data.	<p>ECA will maintain a clearing house of energy consumer advocacy resources, including research reports, submissions, advocacy tools and other documents and data. The information in this clearing house will be made easily available to other advocates.</p> <p>ECA will ensure the development of a strong corporate memory with respect to energy consumer advocacy, and won't only rely on individual consumer or welfare advocates and representatives.</p>

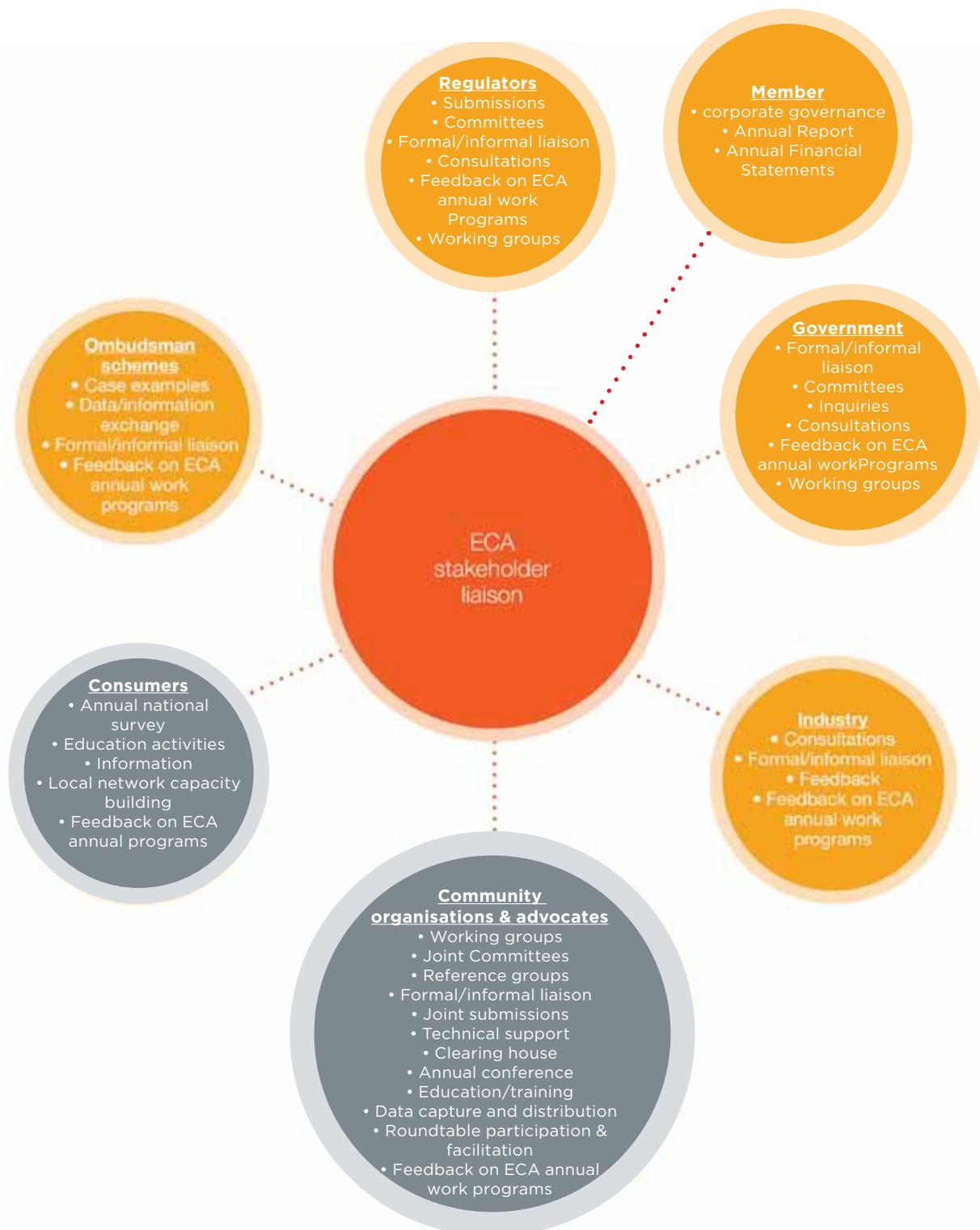
3 Stakeholder analysis and engagement

Key primary stakeholders of Energy Consumers Australia Ltd are:

- All Australian energy consumers
- Jurisdictional and sectoral energy consumer advocacy organisations;
- General consumer bodies (for information).

Other stakeholders include:

- Energy regulators such as:
 - » the Australian Energy Market Commission (AEMC);
 - » the Australian Energy Market Operator (AEMO);
 - » the Australian Energy Regulator (AER); and
 - » jurisdictional regulators.
- Commonwealth and State/Territory Governments;
- Industry at retail, network, transmission and generation levels; and
- Energy Ombudsman schemes.



3.1 COMMUNITY SECTOR AND CONSUMERS

ECA will primarily rely heavily on its links with state/territory-based consumer advocacy bodies to provide a strong foundation for identifying the key concerns and needs of consumers so they can guide the ECA responses to national energy policy and regulatory processes.

In return, ECA's work and resources will improve the quality and reach of these bodies' consumer-driven policy advice and input to decision-making processes.

To achieve this, ECA will maintain strong relationships with energy advocates representing a diverse range of consumers. Working groups, teleconferences and Roundtable meetings will enable open lines of communication through which emerging issues, gaps in representation, and opportunities for collaboration can be identified and used to guide ECA's shorter-term projects and its medium and long-term strategic direction.



ECA's collaboration with the advocacy network

Relationships with general consumer advocacy will be developed to facilitate two-way channels of communication with consumers and their advocates.

The ECA will establish its own consumer engagement and reference strategy, which includes facilitation of, and participation in, the National Energy Consumer Roundtable, and the formation of reference groups, and committees as needed.

Annual national energy consumer survey

ECA will undertake and publish an annual national survey of energy consumers. This survey will ensure ECA is able to make accurate claims on consumer perceptions, attitudes, and experiences with respect to the provision of energy services. Importantly, the survey will help guide ECA's work and advocacy, by identifying the priority issues of concern to residential and small business consumers. The survey will also enable changes in consumer views and perceptions to be tracked over time, and provide some insight into the effectiveness of ECA's advocacy.

3.2 GOVERNMENT & REGULATORY

Relationships with key staff of regulatory authorities, government departments and ministerial offices will be developed to ensure that ECA not only engages in set processes, but also works proactively with key stakeholders to deliver well-researched and presented input on matters that impact on consumers' access to essential energy services. As a primary access point to consumer views and expert advice, ECA will provide added value and efficiency gains to government and regulatory stakeholders seeking consumer engagement and input.

3.3 INDUSTRY

ECA will engage with industry at a range of levels. Its key focus in this engagement will be to encourage best practice delivery of customer assistance, to capitalise on opportunities to place downward pressure on price and to improve service and compliance outcomes for consumers.

3.4 OMBUDSMAN SCHEMES

ECA will establish links with Australia's energy and water ombudsman schemes, drawing on the experience that these schemes have in identifying systemic problems with service delivery.

3.7 LETTERS OF SUPPORT

Letters of support are at Appendix D:

- Australian Energy Regulator (AER)
- Australian Energy Market Commission (AEMC)
- Australia and New Zealand Energy and Water Ombudsman Network (ANZEWON)

4 Activities and Priorities

4.1 KEY NATIONAL PRIORITIES

Through annual planning processes, the Board and staff of Energy Consumers Australia will identify key national priorities to guide its work plan.

The initial key national priorities will include:

Priority	Detail
1. Ongoing network price determinations by the Australian Energy Regulator (AER)	<p>Work is scheduled to be undertaken by the AER on the following price sets during 2012/13:</p> <ul style="list-style-type: none"> • New South Wales (AusGrid, Endeavour Energy and Essential Energy) and the ACT (ActewAGL), for the five year period from 1 July 2014. • Victorian transmission network (SP AusNet) for the five year period from 1 April 2014; • New South Wales and Tasmanian networks (TransGrid and Transend respectively) for the five year period from 1 July 2014. Planning for distribution network price sets will also begin for South Australia, Queensland and Victoria from 2013. <p>Engagement in the network price reset process would occur across the spectrum of the process—from direct with the network service provider prior to consideration by the AER; throughout the AER process; and through any appeals processes.</p> <p>ECA is also keen to explore mechanisms for engagement with, and education of, local communities at the beginning of the process. This is so communities can work with their electricity distributors right from the start of networks' consideration of what services they want to provide in each price review.</p>
2. National Energy Customer Framework (NECF)	<p>NECF is the national customer protection framework for the retail sale of electricity and gas to residential and small business customers. Following enactment of facilitating legislation, it has commenced from 1 July 2012 in the ACT and Tasmania. NSW, Victoria and SA will commence the NECF as soon as practicable (no later than 1 January 2014), while Qld is still considering application of the NECF.</p> <p>This means that advocacy will continue to be required:</p> <ul style="list-style-type: none"> • in relation to existing jurisdictional retail regulation; and • to prepare for the transition for the NECF framework, including resolving outstanding issues. <p>Monitoring compliance of the NECF will also be an ongoing priority for consumer advocacy—there will be a need to set a high expectation around compliance and enforcement.</p>

3. Rule changes and reviews undertaken by the Australian Energy Market Commission (AEMC)	<p>There are numerous AEMC Rule changes and reviews that will benefit from more sustained national energy consumer advocacy. Currently these include:</p> <ul style="list-style-type: none"> • the Economic Regulation of Network Service Providers Rule Change • the Power of Choice demand side participation review • the Review of Distribution Reliability Outcomes and Standards (NSW and national) • the Transmission Frameworks Review <p>ECA will engage in these and other AEMC Rule changes and reviews, where processes would benefit from consumer engagement. ECA will contribute to and support engagement from energy consumer advocates.</p>
4. Government and/or Standing Council on Energy & Resources (SCER) led reviews	<p>There are a number of government and/or SCER led processes that require national energy consumer advocacy, including:</p> <ul style="list-style-type: none"> • the finalisation of the Energy White Paper and its implementation • the Productivity Commission inquiry into electricity network regulation • the Review of the Limited Merits Review regime • the SCER Demand Side Participation Work Plan • the SCER Statement on Smart Meters for Small Customers <p>ECA will provide key guidance for these and other reviews from a national energy consumer advocacy perspective.</p>
5. Stakeholder engagement	<p>ECA will adopt a consumer engagement plan to maintain a close association and connection with consumers and their representatives.</p> <p>The consumer engagement plan will include facilitation of, and participation in, the National Consumers Roundtable on Energy, the establishment of issue-specific reference groups (including reference groups relating to small businesses) and an annual national survey of consumers.</p> <p>ECA will also maintain close working relationships with governments, regulators and ombudsmen (see Section 3 above), as well as representatives of the energy industry.</p>
6. Research and development of expertise	<p>ECA will develop a research agenda in consultation with the broader network of energy consumer advocates, and other relevant parties.</p> <p>Research will particularly identify views and needs of small business consumers, so as to include these in the advocacy activities.</p>
7. Communication	<p>ECA will develop a communications plan, including media and campaigns. This communications plan will form an important aspect of ECA's proactive advocacy agenda.</p> <p>Proactive advocacy promotes specific proposals for change to advance the interests of consumers. Those proposals are developed based on consumer research, and on the experiences of consumers and agencies that provide services to consumers. This type of advocacy can identify problems faced by consumers that may warrant government action.</p>

4.2 BROAD ACTIVITIES

Energy Consumers Australia's Activities are expressed broadly in Section 1.4 of this Plan and in Clause 4.2 of the ECA Constitution. A more detailed explanation of ECA's proposed activities is set out below:

Activities

- Distribution price re-sets
 - » Deliver technical, legal, economic and regulatory expertise to engage in network and transmission distribution network price resets on behalf of residential and small-business consumers
 - » Use in-house and externally sourced skills to challenge proposals made by DNSPs and/or TNSPs where alternative practices could realise service or cost benefits to consumers
 - » Engage with local communities to build their capacity to engage/negotiate directly with network businesses prior to network submissions to regulators
 - » Provide guidance and support for consumer organisations in the relevant jurisdictions in order to facilitate a critical mass of skilled consumer representation in reset processes
 - » Use repeated engagement with these processes to continuously improve capacity to further consumer interests in future resets and inform strategic approaches towards potential legal or regulatory reform.
- NECF preparation
 - » Be a repository of knowledge and skills to assist in providing advice to all levels of government on the NECF, energy consumer protections in non-NEM jurisdictions and jurisdictional derogations
 - » Use this knowledge to advocate for smooth implementation, best practice consumer protections and augmentation of the NECF as innovative energy-related services enter the market.
 - » Advocacy in relation to possible future developments around smart meters in the NECF
- Rule changes
 - » Take a long-term strategic approach to the development of Rules that facilitate the delivery of essential services in the long term interests of consumers, in keeping with the National Electricity Objectives.

- Market reviews
 - » In order to advance consumer interests, ECA will harness policy expertise, technical, economic, legal and regulatory skills to provide input into market reviews. This should allow consumer input that is of a similar quality to that on the supply side
 - » Use links with energy consumer advocates, and consumer advocates more broadly, to develop and put forward practical actions that have broad support and are capable of producing equitable outcomes for a diverse range of consumers.
- External communications
 - » ECA will have an important role in communicating publicly about energy issues relevant to consumers. This will involve synthesising often complex and technical material into summaries and communications that are simple enough to appeal to the public at large
 - » External communication will also involve providing information and advice to other community organisations that might have a tangential or indirect focus on consumer energy issues.
- Law reform
 - » ECA will actively engage in high-level processes that are guided by relevant law and policy. As such, it is ideally placed to identify strategic opportunities for reform that may produce outcomes that more closely align with the interests of consumers
 - » Reform may also be aimed at removing barriers to consumer participation in legal and quasi-legal processes, such as Merit Reviews or Rule Changes.
- Research
 - » The energy market is complex and, to date, related consumer research has been disparate and not always capable of providing a foundation for strategic policy goals. Similarly, the rapid evolution of the energy market also necessitates contemporary research that can test consumers' ability to respond to innovation and any resulting challenges or opportunities
 - » ECA will undertake and commission consumer-focused research that will enhance its ability to develop evidence-based policy, advice on program development and effectively targeted energy literacy campaigns.

- Service to consumers
 - » ECA will deal with direct consumer contacts by investigating the issues raised, mining necessary information for its advocacy, and then appropriately referring the consumer to a relevant body such as an Ombudsman or other state-based advocacy body.
 - » ECA will draw on data and analysis from jurisdictional and sectoral-focussed energy advocates, consumer advocates and consumer-driven organisations in order to amplify the voices of consumers in decision-making processes
 - » ECA will add value by synthesising consumer views into practical and deliverable policy recommendations as well as using the information it gathers from key consumer stakeholders to identify and allocate resources to opportunities for reform
- A clearing house
 - » ECA will serve as a repository for energy and relevant consumer research. Facilitated by a web-based portal, domestic and international research will be available publicly in one central site
 - » Additionally, in-house databases will facilitate the development of a nation-wide 'organisational memory' that does not currently exist. This will allow cross-jurisdictional comparison of energy policy, programs, consumer protections and assistance, allowing for the identification of best practice, training of advocates and building the capacity of advocates to engage effectively in cyclical processes.
- Consumer education and materials
 - » With a broad national focus, ECA is best placed to improve the energy literacy of consumers through the development of printed and electronic resources, campaigns and training modules
 - » An understanding of the ways in which various consumer segments access information will be used to design and develop resources, awareness campaigns and training modules that are best placed to assist consumers in the transition from buying energy as a generic product to making informed choices about contemporary energy products and efficient consumption.

5 Management Summary

5.1 BOARD

ECA Ltd will have 7 Directors, whose backgrounds must include:

- Chair: demonstrated understanding of the energy industry, consumer advocacy methodologies and significant corporate governance experience and qualifications
- Directors: expertise in areas of corporate governance and strategic planning and have a deep knowledge and understanding of issues affecting all residential and small business energy consumers.

To ensure national input, Directors must reside, or work in, at least 4 states and territories at any one time.

An independent Nominations Panel will be constituted from the Members as well as independent Panel members, to select and recommend the initial Directors for approval by the Members. This selection process will take place prior to ASIC approval of the Company, so that the inaugural Directors are ready to take up their roles as soon as the Company is approved. The independent Nominations Panel will put in place a fully transparent, fair and open process for the selection of Directors, who do not need to be Members of the Company. The process will be managed by an external recruiter.

5.2 ORGANISATIONAL STRUCTURE

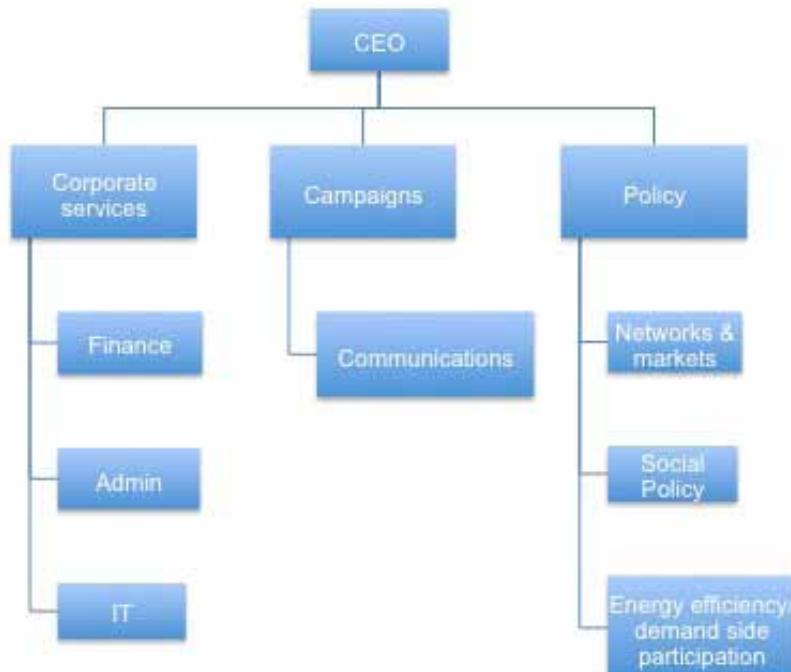
Structure

ECA will maximise its efficiency through its staffing and structure. It will retain a relatively modest staff, whose expertise will span the key disciplines relevant to energy markets, policy and regulation, as well as external communication.

These staff will be supported by a strong management group and corporate services team.

ECA will engage contractors to provide particular technical and specialist expertise.

Broadly speaking, it is anticipated that ECA's staffing structure will appear as follows.



5.2.1. CHIEF EXECUTIVE OFFICER

The CEO will be responsible to the ECA Board for the strategic direction and overall management of the organisation. The CEO will work with a management team that covers corporate services, campaigns and policy.

The CEO's responsibilities will include:

- developing and pursuing the strategic direction of the organisation;
- controlling resources and being responsible for measurable results;
- identifying and maintaining important relationships with organisations and individuals;
- developing and implementing operational plans and policies;
- taking overall responsibility for the organisation's external communications; and
- managing ECA people and resources for best outcomes.

5.2.2 CORPORATE SERVICES

Corporate services will be provided by a small team, with a manager responsible to the CEO.

Its responsibilities will include:

- accounting and financial processes and systems;
- human resource management;
- IT management; and
- administration.

Other than the manager, the roles may not be full time. Finance is a hands-on book-keeping role, including payroll, possibly part-time. Administration includes reception and support to the campaigns and policy teams. The IT role may be out-sourced, with a basic level of IT experience in one of the other team members.

5.2.3 CAMPAIGNS

The campaigns manager will be responsible to the CEO.

The responsibilities of this group will include:

- developing innovative campaign and education strategies and opportunities;
- developing and implementing marketing, communications and media strategies;
- developing and managing coverage and discussion of the organisation's activities through social media such as Twitter and Facebook;
- preparing and distributing media releases, and supporting the organisation's capacity to make media statements by assisting staff to prepare for media interactions;
- responding to media enquiries for information and interviews and building the organisation's reputation as a reliable source of comment;
- managing the production of corporate materials such as newsletters, annual reports, brochures and website pages; and
- connecting to jurisdictional and sectoral based advocacy bodies to build co-ordinated campaign activities.

5.2.4 POLICY

The policy team will conduct much of the organisation's substantive work. It will need a range of expertise including law, economics and social science, drawing on the policy expertise and knowledge developed in the existing broader network, as well as its own policy skills. The policy manager might have 'generalist' expertise – that is, experience in one such discipline, but with management experience that allows this person to supervise across a range of areas. By contrast, the policy officers would have more specialised expertise, so that ECA has in-house skills to conduct research and engage consultants in relation to networks and markets and social policy.

The policy manager will be responsible to the CEO. The policy officers will report to the policy manager.

The responsibilities of this group will include:

- researching issues related to household energy supply to identify current and emerging issues;
- researching and developing policy positions to provide a basis for advocacy;
- identifying and differentiating interactions between energy and social policy and developing advocacy strategies and alliances to address these issues;
- responding to proposed regulatory changes;
- planning and managing specific projects to achieve outcomes consistent with strategic priorities;
- drafting submissions, reports and articles to communicate policy positions to decision makers and to the community; and
- engaging and working with external consultants on research and other projects involving specialist expertise.

5.3 Personnel Plan

ECA Ltd will have a staff of FTE 9.5.

The organisational positions are:

Position	FTE
CEO	1
Director Policy	1
Policy Officer Legal	1
Policy Officer Economics	1
Policy Officer General	1
Director Campaigns	1
Communications/web officer	1
Business Manager	1
Admin Payroll/Bookkeeping	0.5
Exec Support - Reception	1
TOTAL	9.5

6 Financial Plan

6.1 ESTABLISHMENT BUDGET

Please refer to Appendix B.

6.2 ANNUAL BUDGET

Please refer to Appendix B.

6.3 LONG-TERM PLAN

To enable an effective timeframe for establishment of ECA, a two year period is suggested, before any review of current national energy consumer advocacy arrangements is undertaken.

This will allow time for the centre to establish itself and the all-important relationships with state/ territory energy advocates and agencies. It is anticipated that two years would allow enough time for relationships and trust to build, forging a solid and comprehensive body of expertise and knowledge for the benefit of consumers.

It will also allow for some ECA expertise and experience to be developed in the previously little touched areas of network pricing, and gas.

The ECA Constitution makes provision for reviews and in particular a review after two years operation of the centre. The ECA Board is required to commission this independent review.

The Constitution requires that the review be independent from the ECA to ensure a genuinely impartial assessment of the ECA's strengths and weaknesses over the first two years.

APPENDIX A

Energy Consumers Australia Ltd Constitution

Date 17/10/2012

Constitution of Energy Consumers Australia Limited

ACN [insert]

Company Limited by Guarantee not having a Share Capital

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1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Constitution:

Act means the *Corporations Act 2001* (Commonwealth).

Annual General Meeting means the annual general meeting of Members.

Applicant means a person or Organisation lodging an Application for membership under this Constitution.

Application means an application for Membership.

Auditor means the auditor or auditors of the Company.

Board means the board of directors of the Company, acting collectively under this Constitution.

Business Day means Monday to Friday excluding public holidays in Victoria.

Casual vacancy is a vacancy that occurs in the position of director of other office holder other than by way of the termination of that role through the expiry of the time the position was fixed for.

Chairperson means the Director who is elected to this office in accordance with clause 17.4.

Company means Energy Consumers Australia Limited as that name is amended from time to time.

Constitution means this Constitution, as amended from time to time.

Deputy Chairperson means the Director who is elected to this office in accordance with clause 17.4.

Director means a person who is, for the time being, a director of the Company.

Directors means more than one Director.

Energy Advocacy means activities outlined in 4.2 of this Constitution.

Extraordinary Meeting means a general meeting of Members other than an Annual General Meeting.

General Meeting means an Annual General Meeting or an Extraordinary Meeting of the Company.

Legal Person means a natural person (individual) or an Organisation.

Member means a Legal Person admitted to Membership in accordance with this Constitution, and whose name is entered in the Register as a Member of the Company.

Membership means membership of the Company.

Objects means the Objects for which the Company is established as set out in clause 4.

Organisation includes a body corporate, association, firm, partnership, or other unincorporated body.

Reference Group means any Reference Group or Groups constituted under clause 32.

Register means the register of Members kept in accordance with the Act.

Registered Address means the address of a Member shown in the Register.

Registered Office means the registered office of the Company.

Secretary means the Director who is elected to this office, during the term of that appointment, in accordance with clause 17.4.

Special resolution has the meaning given by the Act.

Treasurer means the Director who is elected to this office in accordance with clause 17.4.

Voting Member means a Member entitled to vote under this Constitution.

Voting Membership means that part of the Membership made up of Voting Members.

1.2 Interpretation Rules

In this Constitution, unless the context requires otherwise:

- 1.2.1 subject to clauses 1.2.2 and 1.2.3 below, words that are defined in state and commonwealth energy laws have the same meaning as in that statute;
- 1.2.2 energy includes electricity and gas; and
- 1.2.3 consumer means end users of energy services, including residential users of energy services and small business users of energy services, and includes rural and regional consumers, in their capacity as consumers.

1.3 General Interpretation

In this Constitution, unless the context requires otherwise:

- 1.3.1 a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of that person;
- 1.3.2 anything (including a right or obligation or concept) includes each part of it;

- 1.3.3 the word "agreement" includes an undertaking or other binding arrangement or understanding, whether or not in writing;
- 1.3.4 a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them;
- 1.3.5 this or any other document includes the document as varied or replaced regardless of any change in the identity of the parties;
- 1.3.6 a clause, schedule or appendix is a reference to a clause, schedule or appendix in or to this Constitution;
- 1.3.7 a word or phrase that is defined has the corresponding meaning in its other grammatical forms;
- 1.3.8 writing includes all modes of representing or reproducing words in a legible, permanent and visible form;
- 1.3.9 the singular includes the plural and vice versa;
- 1.3.10 a gender includes all other genders;
- 1.3.11 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Constitution; and
- 1.3.12 a reference to a Chapter, Part, Division, or section is a reference to a Chapter, Part, Division or section of the Act.

1.4 Replaceable Rules Displaced

Each of the provisions of the Act that would apply to the Company as a replaceable rule set out in the Corporations Act but for this clause, is expressly displaced and does not apply to the Company.

2. COMPANY LIMITED BY GUARANTEE

2.1 Company limited by guarantee

The Company is a company limited by guarantee and the liabilities of the Members are limited as provided in this Constitution.

2.2 Restriction on application of profits

All profits (if any) and other income (including funding) and property of the Company must be applied in promoting the Objects and no part of them may be paid, directly or indirectly, by way of dividend, bonus or otherwise to any Member.

2.3 Certain payments allowed

Clause 2.2 does not prevent the payment in good faith of reasonable and proper Remuneration to any officers and employees of the Company or other person in return for any service actually rendered to the Company.

3. NAME OF THE COMPANY

The name of the Company is Energy Consumers Australia Limited.

4. OBJECTS, ACTIVITIES AND POWERS

4.1 Objects

The Objects of the Company are to:

- 4.1.1 advance the interests of Australian residential and small business energy consumers, including vulnerable groups, through national advocacy;
- 4.1.2 promote secure access to affordable, reliable, safe, and environmentally sustainable energy services for all consumers;
- 4.1.3 develop and amplify a strong, coordinated voice for Australian consumers, through collaborative work with organisations engaging in energy consumer advocacy, and to represent and advocate on behalf of Australian consumers to Government, regulators and the energy industry;
- 4.1.4 facilitate access and disseminate information and tools to consumers, consumer representatives and consumer and welfare organisations;
- 4.1.5 identify and redress systemic disadvantage and market failure, to promote a fair energy market, recognising that energy is an essential service which contributes to wellbeing and the ability to participate in the economic and social mainstream, and recognising the important correlation between social and energy policy;
- 4.1.6 advocate on behalf of energy consumers on energy law and regulatory reform.

4.2 Activities

Without limiting the effect of clause 4.2.6, the Company will seek to achieve its Objects through the creation of a national energy advocacy centre which will:

- 4.2.1 advocate on behalf of Australian residential and small business consumers, to governments, regulators, and industry through:
 - 4.2.1.1 participation in regulatory and co-regulatory activities;
 - 4.2.1.2 contribution to the development of policy relevant to energy consumers;
 - 4.2.1.3 collaborative work with consumer and welfare organisations engaged in energy advocacy in each Australian state and territory, including consumer

organisations working to assist low income and vulnerable energy consumers.

- 4.2.2 conduct research on its own initiative and on issues identified by state/ territory based energy advocacy organisations;
- 4.2.3 contribute to the development of and compliance with industry codes, standards and guidelines for the energy industry; and to identify areas where industry and/or regulatory response is necessary;
- 4.2.4 facilitate forums, consultations and meetings to promote engagement and priority setting with consumer groups and representatives;
- 4.2.5 support, train and enhance the capacity and effectiveness of consumer representatives;
- 4.2.6 build and strengthen alliances that favour consumer interests;
- 4.2.7 engage in public discussion of energy issues, through media and campaigns;
- 4.2.8 establish and maintain a knowledge base of internal and external technical expertise and research;
- 4.2.9 keep adequate data on national energy consumer issues, for reporting purposes and to identify and redress issues which negatively impact energy consumers.

4.3 Powers

The Company may exercise all powers, rights and privileges as a natural person may do or exercise, for the purpose of furthering the Objects set out above.

5. LIABILITY OF MEMBERS

The liability of each Member is limited to the amount specified in clause 39.2. Each Member undertakes to contribute to the Company's property if the Company is wound up while he or she is a Member or within one year after he or she ceases to be a Member, for payment of the Company's debts and liabilities contracted before he or she ceases to be a Member and of the costs, charges and expenses of winding up and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding an amount set out in 38.2.

6. NON-PROFIT

6.1 No payment or transfer to Members

All of the income and property of the Company must be applied solely towards the promotion of the Objects of the Company as set out in this Constitution. No portion of it may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise to the persons who at any time are or have been Members.

6.2 Payments in good faith

- 6.2.1 Notwithstanding clause 6.1 and subject to clauses 6.2.2 and 6.2.4, the Company may make payments in good faith of remuneration to any Member, officer or employee of the Company in return for any services rendered to the Company or for goods supplied in the ordinary and usual course of business.
- 6.2.2 The Company must not make any payment to a Director for services rendered by that Director to the Company unless the provision of those services has the prior consent of the Board, and the amount payable is approved by a resolution of the Board and is on reasonable commercial terms.
- 6.2.3 The Company must not make any payment to a Director in his or her capacity as an employee of the Company, in return for any services rendered by that employee to the Company, unless the terms of that employment have first been approved by a resolution of the Board.
- 6.2.4 The Company may pay interest on money borrowed from any Member and may pay reasonable and proper rent for premises let by a Member to the Company.
- 6.2.5 For the purposes of clause 6.2.4, any sum paid by a Member to the Company as a deposit, bond or other security for the payment of fees and charges levied under the Constitution does not constitute money borrowed from a Member.

7. MEMBERSHIP

7.1 General

- 7.1.1 The Members of the Company are such Legal Persons as the Board admits to Membership in accordance with this Constitution.
- 7.1.2 Legal Persons in the following categories will be eligible to be Members:
 - 7.1.2.1 those who subscribe to the Objects of the Company;
 - 7.1.2.2 those who engage in energy advocacy activities as described in clause 4.2; and
 - 7.1.2.3 those that the Board considers would benefit the Company by becoming a member.
- 7.1.3 The Company may at any time determine other categories of persons who will be eligible to be Members.

7.2 Classes of Members

- 7.2.1 The Company consists of the following classes of Members:

7.2.1.1 Voting Members.

7.2.2 The Board, in its absolute discretion, may determine from time to time to admit a new class of Members .

7.3 Voting Members

7.3.1 Each Voting Member is entitled to one vote at a General Meeting of the Company whether on a show of hands or on a poll.

7.3.2 Organisations:

7.3.2.1 whose Objects are not consistent with the Company's Objects; or

7.3.2.2 which do not engage in energy advocacy activities as defined in 4.2; or

7.3.2.3 that are party political or profit making in character; or

7.3.2.4 that are part of the energy industry,

as determined by the Board, are not eligible to become Voting Members of the Company.

7.4 Membership Not Transferable

Membership may not be transferred to another Legal Person.

8. ADMISSION TO MEMBERSHIP

8.1 Application and Assessment

An Application must be made and lodged in the form prescribed by the Board.

8.2 Pre-condition to Membership

A Legal Person is only entitled to become a Member if that person agrees to assume the liability to pay the amount specified in clause 38.

8.3 Admission

8.3.1 The Board will consider and in its absolute discretion accept or reject any Application. The Board is not required to give any reasons for the rejection of an Application.

8.3.2 An Applicant will not become a Member until the name and address of the Applicant is entered in the Register.

9. CESSATION OF MEMBERSHIP

9.1 Cessation of Membership

Membership of the Company ceases if the Member:

- 9.1.1 resigns by giving 30 days written notice to the Company;
- 9.1.2 being a natural person, dies, becomes bankrupt, or enters into a scheme of arrangement with creditors;
- 9.1.3 being an Organisation, becomes subject to any form of insolvency or other administration, whether voluntary or otherwise, or a receiver or a receiver and manager is appointed over any of its property or it is the subject of an order by a court of competent jurisdiction directing the Organisation to be wound up; or
- 9.1.4 ceases to satisfy the criteria for admission to Membership.

9.2 Surviving Liability

Upon the expiration of the period of notice, the Member ceases to be a Member but remains liable for:

- 9.2.1 any moneys which may be owing to the Company; and
- 9.2.2 in the case of the Company being wound up within one year of the date on which the Member resigns from Membership, the relevant contribution under clause 38.

10. EXPULSION OF MEMBER

10.1 Resolution

Subject to clause 10.2, the Board, by a resolution passed by 75% of the Directors present and voting, may expel a Member or implement appropriate disciplinary action if the Member:

- 10.1.1 has committed a breach of any obligation or duty under this Constitution; or
- 10.1.2 has engaged in conduct detrimental to the interests of the Company and its Objects.

10.2 Notice

- 10.2.1 At least twenty-eight days before the meeting of the Board at which a resolution referred to in clause 10.1 is considered, the Member must be:
 - 10.2.1.1 served notice of the meeting including the particulars of the alleged act, omission or conduct complained of and the intended resolution; and

10.2.1.2 given the opportunity to present in writing or orally (or both) at the meeting and before the passage of the resolution any explanation the Member thinks fit,

and the Board will take the explanation into consideration.

10.2.2 The Board will serve the Member with notice of any Board resolution made at the above meeting. If the Board resolves to expel the Member, that Member will cease to be a Member on the service of such notice.

10.3 Removal from the Register

10.3.1 Where a Member is expelled from the Company, that Member's name must be removed from the Register.

10.3.2 Upon the removal of a Member's name from the Register:

10.3.2.1 the Member will forfeit all rights and privileges attaching to Membership and all rights which the Member may have against the Company arising out of the Membership; and

10.3.2.2 the Company will have no liability to such Member in respect of the removal from the Register.

11. REGISTER

11.1 Register of Members

The Company must keep and maintain the Register in accordance with the Act and otherwise as the Board determines.

11.2 Disputes

Any dispute that arises in relation to the Register must be referred to the Board, whose decision will be final and binding on all Members.

12. GENERAL MEETINGS

12.1 Annual General Meeting

The Company must hold an Annual General Meeting in every calendar year within five months of the end of its financial year at the time and place determined by the Board.

12.2 Extraordinary Meeting

The Board may convene an Extraordinary Meeting at such time and place as the Board thinks fit, but it must be convened in accordance with the Act. Voting Members may also request the Board to convene an Extraordinary Meeting, but the Board is only required to do so in accordance with the Act.

13. NOTICE OF GENERAL MEETINGS

13.1 General

The Board must give not less than 21 days' written notice of a General Meeting to the Voting Members, the Directors and the Auditor.

13.2 Contents of Notice

The notice referred to in clause 13.1 must specify the following information:

- 13.2.1 the place, the day and the hour of meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
- 13.2.2 the general nature of the meeting's business;
- 13.2.3 the details of any special resolutions to be proposed at the meeting; and
- 13.2.4 that Voting Members are entitled to appoint a proxy who may but does not have to be a Voting Member.

13.3 Alteration of Procedure

With the consent of all the Voting Members entitled to vote at some particular meeting, that meeting may be convened by such shorter notice and in such manner as the Voting Members may think fit provided that such action complies with the Act.

13.4 Failure to Receive Notice

The accidental omission to give notice of a meeting to any Voting Member or the non-receipt of such notice by any Voting Member does not invalidate any resolution passed at, or proceeding of, that meeting.

14. PROCEEDINGS AT GENERAL MEETINGS

14.1 Business

The ordinary business of an Annual General Meeting may include:

- 14.1.1 the consideration of the annual financial report, the Directors' report and the Auditor's report; and
- 14.1.2 the appointment of the Auditors and the fixing of the Auditor's remuneration.

14.2 Quorum

No business may be transacted at any General Meeting except the adjournment of the meeting unless a quorum is present. The quorum for a General Meeting is 60 per cent of the Voting Membership, present in person or by proxy.

14.3 No Quorum

If a quorum is not present within half an hour from the time appointed for a General Meeting:

- 14.3.1 if convened on the requisition of Voting Members, the meeting will be dissolved; and
- 14.3.2 in any other case, the meeting will be adjourned to the same day in the next week at the same time and place or at such other place as the Chairperson appoints. If at that adjourned meeting a quorum is not present within fifteen minutes from the time appointed for holding the meeting, the Voting Members present will be a quorum.

14.4 Chairperson

- 14.4.1 The Chairperson or in their absence, the Deputy Chairperson, will preside as chairperson at every General Meeting and has charge of the conduct of that meeting, including the procedures to be adopted and the application of those procedures at the meeting.
- 14.4.2 If at any General Meeting neither is present within fifteen minutes after the time appointed for holding the meeting or if neither is willing to preside, the Voting Members present will choose a Director to preside.

14.5 Adjournment

- 14.5.1 The Chairperson of a General Meeting at which a quorum is present may, with the consent of the Voting Members, and must, if so directed by the meeting, adjourn the meeting to another time or place (or both).
- 14.5.2 Only unfinished business may be transacted at any meeting resumed after an adjournment of a General Meeting.
- 14.5.3 Where a General Meeting is adjourned for one month or more, new notice of the adjourned meeting must be given.

14.6 Show of Hands

Every item of business submitted to a General Meeting will be decided in the first instance by a show of hands of the Voting Members personally present and entitled to vote. The Chairperson will not have a casting vote.

14.7 Evidence of Resolution

A declaration by the Chairperson that a resolution has been passed or lost (having regard to the majority required) and an entry to that effect in the books of the Company, signed by the Chairperson of that or the next succeeding meeting, will be conclusive evidence that the resolution has been passed or lost without proof of the number or proportion of the votes recorded in favour of or against the resolution.

14.8 Poll

- 14.8.1 The Chairperson or any Voting Member present personally or by proxy may demand a poll before or on the declaration of the result of a show of hands.
- 14.8.2 The poll will be taken in the manner and at the time and place as the Chairperson of the meeting directs, and either at once or after an interval or adjournment or otherwise.
- 14.8.3 The result of the poll will be deemed to be the resolution of the meeting at which the poll was demanded.
- 14.8.4 The demand for a poll may be withdrawn.
- 14.8.5 If there is a dispute as to the admission or rejection of a vote, the Chairperson will finally determine that dispute.
- 14.8.6 At a poll, the Chairperson will not have a casting vote in addition.

14.9 Demand for Poll

The demand for a poll will not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded. A poll demanded on any question of adjournment will be taken at the meeting and without adjournment.

14.10 Auditor

The Auditor is entitled:

- 14.10.1 to attend any General Meeting of the Company;
- 14.10.2 to receive all notices of and other communications relating to any General Meeting which a Voting Member is entitled to receive; and
- 14.10.3 to be heard at any General Meeting which the Auditor attends on any part of the business of the meeting which concerns the Auditor in that capacity and is entitled to be heard, despite the fact that the Auditor retires at that meeting or a resolution to remove the Auditor from office is passed at that meeting.

15. APPOINTMENT OF PROXY

15.1 General

- 15.1.1 Any Voting Member may appoint a Legal Person as a proxy to vote on the Voting Member's behalf and may direct the proxy to vote either for or against each or any resolution.
- 15.1.2 A proxy may but does not have to be a Voting Member.

15.2 Instrument Appointing Proxy

15.2.1 The Company must receive the instrument appointing a proxy (and an original or certified copy of the power of attorney, if any, under which it is signed) at:

15.2.1.1 the Registered Office; or

15.2.1.2 a fax number at the Registered Office; or

15.2.1.3 a place, fax number or electronic address specified for such purpose in the notice of meeting,

not less than forty-eight hours before the time for holding the meeting or adjourned meeting or poll at which the person named in the instrument is to vote.

15.2.2 Unless the contrary is stated on it, an instrument appointing a proxy is valid for any adjournment of the meeting to which it relates.

16. FORM OF PROXY**16.1 Required Information**

An instrument appointing a proxy must contain the following information:

16.1.1 the Voting Member's name and address;

16.1.2 the Company name;

16.1.3 the proxy's name or the name of the office held by the proxy; and

16.1.4 the meetings at which the appointment may be used

and be signed by the appointor.

16.2 Voting Instructions

An instrument appointing a proxy may specify the way in which the proxy is to vote for a particular resolution and if so, the proxy is not entitled to vote on the resolution except as specified in the instrument.

16.3 Authority

An instrument appointing a proxy will be deemed to confer authority to demand or join in demanding a poll and will (except to the extent to which the proxy is specifically directed to vote for or against any proposal) include power to act generally at the meeting for the person giving the proxy.

17. DIRECTORS

17.1 Number and Qualifications of Directors

- 17.1.1 The number of Directors comprising the Board will be no less than 7 and no more than 12.
- 17.1.2 Directors must, at all times, reside or ordinarily work in, a minimum of 4 different Australian states or territories
- 17.1.3 A Director need not be a Member of the Company.
- 17.1.4 Subject to the maximum number of directors for the time being fixed under clause 17.1.1 not being exceeded, the Board, (by ordinary resolution) may appoint a person to be a director to fill any vacancy.

17.2 Composition of Board

The Directors appointed under clause 17.1 must include:

- (a) at least one Director who is a person with demonstrated understanding of the energy industry, consumer advocacy methodologies and significant corporate governance experience and qualifications; and
- (b) Directors who have expertise in areas of corporate governance and strategic planning and have a deep knowledge and understanding of issues affecting all residential and small business energy consumers.

17.3 Term of Appointment

- 17.3.1 No Director may hold office for a period of more than three years from their appointment to the Board. Upon expiry of a Director's term of appointment, the Director must retire from office but will be eligible for re-election.
- 17.3.2 At least:
 - 17.3.2.1 two Directors must be appointed for a term of one year;
 - 17.3.2.2 two Directors must be appointed for a term of two years; and
 - 17.3.2.3 three Directors must be appointed for a term of three years.
- 17.3.3 A Director may not serve more than three consecutive terms (of any period) on the Board but may be eligible to serve a further term or terms at a later date.

17.4 Officers on the Board

At the first meeting of the Board after:

- 17.4.1 the adoption of this Constitution; and
- 17.4.2 each Annual General Meeting,

the Directors will elect from among their number a Chairperson, a Deputy Chairperson and a Secretary, each of whom will hold office until the end of the next Annual General Meeting.

18. ALTERNATE DIRECTORS**18.1 Appointment and terms of appointment**

- 18.1.1 If a Director wishes to appoint a person as an alternate, that Director must give notice to the Company detailing:
 - 18.1.1.1 the name, experience and qualifications of the person;
 - 18.1.1.2 the terms upon which the Director intends to appoint the person as an alternate, including whether the person is to exercise some or all of the powers of the Director and the proposed terms notified; and
 - 18.1.1.3 whether or not the alternate is to get notice of each meeting the Director is entitled to attend.
- 18.1.2 The Board may ask for further information from the alternate in relation to the alternate's qualifications and experience.
- 18.1.3 If the alternate is a Director, the appointment will take effect immediately.
- 18.1.4 If the alternate is not a Director, at the first meeting of the Board after the notice of the proposed appointment has been received by the Board, the Board must consider the proposed appointment and either accept or reject the appointment. If the Board accepts the appointment of the alternate, the Director may appoint the person on the terms of appointment.
- 18.1.5 Where the alternate is not a Director, an appointment of a person as an alternate is not effective until a signed consent to the appointment is provided by that person to the Company. Accordingly, such an appointment will take effect on the later of the date of appointment and the date on which the Company received the signed consent.
- 18.1.6 An alternate is not an agent of the Director appointing the alternate.

18.2 No liability

The Company is not responsible for ensuring that the terms of appointment of an alternate are complied with and accordingly, is not liable if those terms are not complied with.

18.3 Remuneration of alternate

An alternate is not entitled to receive any fee (or other remuneration) from the Company for services performed as an alternate.

18.4 Notice and attendance at Board meetings

If the notice appointing the alternate provides that the alternate is to receive notice of Board meetings, the Company must provide each alternate with notice. By notice to the Company, the Director who appointed an alternate may at any time require that the notice cease to be given to the alternate. An alternate may not attend any board meeting at which the Director who appointed the alternate is present, except where the alternate is appointed by more than one Director and the alternate is attending that Board meeting in respect of a Director who is not present.]

18.5 Voting of alternate

An alternate is entitled to a vote for each Director that the alternate represents in addition to any vote the alternate may have as a Director in the alternate's own right.

18.6 Termination of appointment of alternate

18.6.1 A Director who appointed an alternate may terminate the appointment of the alternate at any time by notice to the alternate, the Directors and the Company.

18.6.2 An alternate may terminate the alternate's appointment at any time by notice to the Directors and the Company.

18.6.3 A termination of appointment does not take effect until the Company has received notice of termination.

18.7 Cessation of appointment of alternate

An alternate ceases to be an alternate if the person who appointed that alternate ceases to be a Director.

19. CASUAL VACANCIES

19.1 The Board may appoint a replacement Director to any casual vacancy arising in the office of a Director.

20. CESSATION OF DIRECTORS

20.1 The office of a Director will be vacated if:

- 20.1.1 the Director becomes bankrupt, insolvent under administration, or makes any arrangement or composition with his or her creditors or if being a director of a company which is a Member, a winding up order is made in respect of such company;
- 20.1.2 the Director is not permitted by the Act (or an order made under the Act) to be a director;
- 20.1.3 the Director becomes disqualified from acting as a Director under the Act;
- 20.1.4 the Director dies or becomes of unsound mind, or physically or mentally incapable of performing the functions of that office;
- 20.1.5 without leave of the Board, the Director is absent from meetings of the Board for three consecutive Board Meetings, unless the Board makes a resolution to the contrary;
- 20.1.6 by notice in writing to the Company, the Director resigns from office;
- 20.1.7 the Director ceases to hold office by reason of any order made under the Act;
- 20.1.8 the Director was appointed to the office for a specified period and that period expires;
- 20.1.9 the Director, in the opinion of the Board, demonstrates that they are not acting in the interests of, and in accordance with, the Objects of the Company.

21. POWERS OF THE BOARD

- 21.1 The control and direction of the Company and the management of its property and affairs is vested in the Board.
- 21.2 The Board may exercise all powers of the Company that are not required to be exercised or done by the Company in General Meeting.

22. RESPONSIBILITIES OF THE BOARD

- 22.1 Without limiting the responsibilities of the Board under the Act or any other applicable law or this Constitution, the responsibilities of the Board shall include:
 - 22.1.1 setting an annual work program for the Company, after consultation with stakeholders;
 - 22.1.2 representation by at least one Board member at Reference Group forums;
 - 22.1.3 developing the Company's strategic direction consistent with the Company's Objects and advocating these in discussions with regulators, government and the energy industry;

- 22.1.4 CEO appointment and performance management;
- 22.1.5 financial management, including receipt of an annual budget and business plan for approval;
- 22.1.6 commissioning independent reviews of the Company and developing proposals for its continued operation. All reviews will be conducted in consultation with interested parties, including groups representing energy consumers, and community and welfare groups representing public interest issues relevant to energy consumers. The first review will be conducted after the first two years of the Company's operations, with subsequent reviews every 5 years.

22.1 Voting and attendance restrictions on Directors

- 22.1.7 A Director who has a material interest in a matter that relates to the affairs of the Company must give other Directors notice of the interest in accordance with s191 of the Act.
- 22.1.8 Where a Director has a material personal interest in the outcome of a vote, the participation of that Director both in the vote and in the meeting at which the vote takes place shall be governed by the procedures set out in section 195 of the Act.

23. DIRECTORS' REMUNERATION

23.1 Remuneration of the directors

In consultation with the Members and subject to Part 2E.1 of the Act, the Board may fix the remuneration of each Director and that remuneration may consist of sitting fees, salary, bonuses or any other elements (excluding dividends). The overall level of remuneration in any financial year must not exceed in aggregate such sum as may be determined by the Members.

24. BORROWING

The Board may raise money in any manner it thinks fit including the borrowing of money on the security of the Company's assets and the issuing of a security for any other purpose.

25. INVESTMENT

The Board may invest funds of the Company in any manner consistent with the Objects and for any period as it thinks fit.

26. NEGOTIABLE INSTRUMENTS

All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for money paid to the Company will be signed, drawn, accepted, endorsed or otherwise executed (as the case may be) for and on behalf of the Company, by two Directors or by one Director and some other officer authorised by the Board for that purpose or in any other manner as the Board may determine.

27. PROCEEDINGS OF THE BOARD**27.1 General**

- 27.1.1 The Chairperson may at any time, and the Secretary must on request from the Chairperson, convene a Board meeting.
- 27.1.2 The Board may meet together for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit.
- 27.1.3 The Board must meet at least four times a year.
- 27.1.4 The Board may at any time, and the Secretary will, on the request of the Chairperson or Deputy Chairperson convene a meeting of the Board by reasonable notice served upon each Director.
- 27.1.5 The accidental omission to give notice of a meeting to, or the non-receipt of a notice of meeting by, a Director will not invalidate proceedings at a Board meeting.
- 27.1.6 A quorum for meetings of the Board is four (4) of the Directors or such higher number as may be determined by the Board, one of whom must be the Chairperson or the Deputy Chairperson.
- 27.1.7 The Chairperson will be the chairperson of the Board and chair Board meetings. If the Chairperson is not present within fifteen minutes after the time appointed for holding that meeting (or being present is unwilling to act), the Deputy Chairperson will preside at the meeting. If the Deputy Chairperson is not present (or being present is unwilling to act) then the Directors present will choose one of their number to be the chairperson of the meeting.
- 27.1.8 Each Director present at any meeting of the Board will be entitled to one vote.
- 27.1.9 The Chairperson will have a casting vote.
- 27.1.10 A Director is treated as present at a meeting held by audio or audio-visual communication if the Director is able to hear and be heard by all others attending. If a meeting is held in another manner permitted by the Act, the Board must resolve the basis on which Directors are treated as present.
- 27.1.11 The Board may adjourn and, subject to this Constitution, otherwise regulate its meetings as it decides.

27.2 Majority decisions

- 27.2.1 A resolution of the Board must be passed by a majority of the votes cast by Directors entitled to vote on the resolution.

27.3 Use of technology in conferencing

- 27.3.1 Without limiting the discretion of the Board to regulate their meetings, the Board may, if it thinks fit, confer by radio, telephone, facsimile, computer, Internet, closed circuit television or other electronic means of audio or audio-visual communication. A resolution passed by such a conference will, notwithstanding that the Directors are not present together in one place at the time of the conference, be deemed to have been passed at a meeting of the Board held on the day and at the time the conference was held.
- 27.3.2 The provisions of this Constitution regulating the proceedings of the Board apply so far as they are capable to such conferences.

27.4 Defects in Appointment

An act done in good faith by any meeting of the Board, of any committee formed by the Board or by any person acting as a Director will not be invalidated by reason of:

- 27.4.1 any defect in the appointment or tenure of a Director or person acting on any such committee; or
- 27.4.2 the disqualification of any of them.

28. MINUTES

28.1 Minutes to be kept

The Board must cause:

- 28.1.1 proper minutes to be made of the proceedings and resolutions of all meetings of the Company, the Board and committees formed by the Board;
- 28.1.2 the minutes to be entered in books kept for that purpose; and
- 28.1.3 the minutes to be signed by the chair of the meeting or by the chair of the next meeting.

28.2 Evidence of Proceedings and Resolutions

A minute that is recorded and signed in accordance with clause 28.1.3 is evidence of the proceeding or resolution to which it relates, unless the contrary is proved.

29. COMPANY SEALS

29.1 Common seal

The Board:

- (a) may decide whether or not the Company has a common seal; and

- (b) is responsible for the safe custody of that seal (if any) and any duplicate seal it decides to adopt.

29.2 Use of seals

The common seal and duplicate seal (if any) may only be used with the authority of the Board. The Board must not authorise the use of a seal that does not comply with the Act.

29.3 Fixing seals to documents

The fixing of a Company seal to a document must be witnessed by two Directors or one Director and the Secretary.

30. CIRCULAR RESOLUTION

30.1 General

- 30.1.1 If all the Directors have signed a document containing a statement that they are in favour of a resolution of the Directors in terms set out in the document, a resolution in those terms will be deemed to have been passed at a meeting of the Board held on the day on which the resolution was signed and at that time at which the document was last signed by a Director or, if the Directors signed the document on different days, on the day on which, and at the time at which the document was last signed by a Director.
- 30.1.2 Any such resolution in writing may consist of several documents in identical terms, each signed by one or more Directors and must be entered in the relevant book of minutes of the Company.

30.2 Exclusion of Directors Not Entitled to Vote

A reference in clause 30.1.1 to all Directors does not include a reference to a Director who, at a meeting of Directors, would not be entitled to vote on the resolution.

31. DELEGATION BY THE BOARD

- 31.1 Subject to clause 31.2, the Board may delegate any of its powers to individual Directors or Voting Members or to committees, including the committees described in clause 32 consisting of such Directors or Voting Members or both as the Board thinks fit. Any individual or committee so formed must conform to any direction given to it by the Board in the execution of the delegated powers.
- 31.2 The Board may not delegate its power to delegate.

32. COMMITTEES AND GROUPS

32.1 Board Committees and Groups

- 32.1.1 The Board may in its absolute discretion establish committees, working groups, panels or groups as deemed necessary

including, for example and without limitation, a finance and audit committee or nominations committee.

- 32.1.2 Board Committees must have a majority of Directors, but the Board may at its discretion appoint expert advisors as needed.

32.2 Standing Committees/ Ad Hoc Committees/ Reference Groups

The Company's Chief Executive Officer (CEO) may establish standing and/or ad hoc committees or reference groups to undertake specific identified tasks in accordance with the Objects of the Company. Each Committee or Group must have at least one Director on it.

32.3 Sitting Fees

The Board may, at its discretion, pay sitting fees to Standing Committee/ Ad Hoc Committee/ Reference Group members. These sitting fees shall be fixed by the Board but shall not exceed such sum as may be determined by the Members. A Director is not entitled to any remuneration for work on Committees./Groups established under 32.2, over and above Directors remuneration as may already be paid under Clause 23.

32.4 Procedures for Board and Committees/ Groups

The meetings and proceedings of any committee or working group established under 32.1 or 32.2. will be governed by the provisions of this Constitution for regulating the meetings and proceedings of the Board so far as applicable, except that the quorum at such committee or working group meetings is from time to time to be determined by the Board and so far as those provisions are not superseded by any other direction given by the Board. Terms of Reference will be drawn up by the CEO and approved by the Board for these Committees/ Groups.

33. REIMBURSEMENT OF EXPENSES

The Board may authorise the payment of any expenses incurred by any Director or Member in connection with the performance of their duties to the Company.

34. ACCOUNTS

34.1 Books of Account to be kept

The Directors will cause to be kept proper books of account in which will be kept true and complete accounts of the affairs and transactions of the Company. Proper books will not be deemed to be kept unless the books give a true and fair view of the state of the Company's affairs and explain its transactions.

34.2 Location of Books of Account

The books of account will be kept at the Registered Office or place or places as the Directors think fit and will be open to the inspection of the Directors during usual business hours.

34.3 Financial reporting

The Board must cause the Company to prepare a financial report and a Directors' report that comply with the Act and must report to the Members no later than four months after the end of the reporting period or the deadline set the Act (if earlier).

35. AUDITOR

The Board must cause the Company's financial report for each financial year to be audited and obtain an auditor's report.

The Company will observe the provisions of the Act in relation to the eligibility, appointment, removal, remuneration, rights and duties of the auditor (if any), and resignation of an Auditor.

36. DUTY, TAXES AND CHARGES

- 36.1 Each Member will be liable for all duty and any other taxes or charges payable in respect of the Application, the Membership and any other transaction or instrument or transaction relating to such.
- 36.2 Each Member indemnifies and will keep indemnified the Company in respect of all and any liability for duty, taxes or other charges referred to in the preceding clause.

37. INDEMNITY**37.1 Definition of Liability and Officer**

In this clause 37:

- 37.1.1 Liability means costs, losses, liabilities and expenses.
- 37.1.2 Officer means a Director, secretary or other officer of the Company and includes a former Officer, but does not include an auditor or agent of the Company.

37.2 Indemnity of Officers

Every Officer must be indemnified out of the assets of the Company against any Liability incurred by that Officer in the person's capacity as an Officer by reason of any act or thing done or omitted to be done by that person in that capacity or in any way in the discharge of that person's duties or by reason of or relating to the person's status as an Officer, but excluding any Liability from or against which the Company is not permitted by the Corporations Act to exempt or indemnify the Officer.

37.3 Indemnity for Proceedings

Without limiting clause 37.2, every Officer must be indemnified out of the assets of the Company against any Liability incurred by that person in defending proceedings, whether civil or criminal, in respect of any act or thing done by the Officer in that person's capacity as such Officer but

excluding any Liability from or against which the Company is not permitted by the Corporations Act to exempt or indemnify the Officer.

37.4 Insurance

Subject to section 199B of the Act, the Company may enter into, and pay premiums on, a contract of insurance in respect of any person.

38. NOTICES

- 38.1 The Company may serve notice on any Member either personally, or by sending it through the ordinary post to the Member's Registered Address, or by leaving it at the Registered Address in an envelope addressed to the Member or by sending it to the fax number or electronic address (if any) nominated by the Member.
- 38.2 A notice of meeting sent by fax or other electronic means is taken to be served on the Business Day after it is sent. Any notice sent by post is taken to be served three days after the day it is posted. In proving such service, it is sufficient to prove that the envelope containing the notice was properly addressed and deposited as a prepaid letter at the post office or in some postal receptacle.
- 38.3 A certificate in writing signed by the Secretary or any officer of the Company that the envelope containing the notice was properly stamped, addressed and posted will be conclusive evidence of the service of such notice.
- 38.4 If a specified period must pass after a notice is given before an action may be taken, neither the day on which the notice is given nor the day on which the action is to be taken may be counted in reckoning the period.

39. CONTRIBUTION ON WINDING-UP

- 39.1 Every Member undertakes to contribute to the property of the Company if it is wound up:
 - 39.1.1 while that person is a Member; or
 - 39.1.2 within one year after that person ceases to be a Member;

in respect of the debts and liabilities of the Company contracted before that person ceases to be a Member, in respect of the costs, charges and expenses of winding-up and for the adjustment of the rights of the contributories among themselves.
- 39.2 The amount to be contributed by any Member will not exceed ten dollars.

40. DISTRIBUTION OF PROPERTY ON WINDING-UP

- 40.1 If, upon the winding-up or dissolution of the Company after the satisfaction of all its debts and liabilities there remains any property, this property must not be paid to or distributed among the Members.

40.2 Instead, this property must be given or transferred to some other institution or institutions having:

- 40.2.1 objects similar to the Objects of the Company; and
- 40.2.2 a Constitution which prohibits the distribution of its income and property among its members to an extent at least as great as is imposed on the Company under clause 6 of this Constitution.

40.3 This institution or institutions must be determined by:

- 40.3.1 a special resolution of the Voting Members at or before the time of dissolution; or
- 40.3.2 if no such special resolution is passed, by a Judge of the Supreme Court or another court of competent jurisdiction.

APPENDIX B

Budgets

ESTABLISHMENT BUDGET

BUDGET

ASIC Registration	\$757
Commercial Lease Legals	\$15,000
Broker - Lease	\$10,000
Office Fit Out	\$300,000
Recruitment fees	\$25,000
Reconnection of services	\$5,000
Sub total	\$355,757

Capital expenditure

Equipment	\$40,000
Furnishings	\$30,000
Computer/server	\$25,000
Cabling	\$5,000
Contingencies	\$20,000
Total (rounded)	\$476,000

NATIONAL ENERGY ADVOCACY ORGANISATION

3-YEAR OPERATING BUDGET

	Year 1	Year 2	Year 3
REVENUE			
Funding			
Grant	\$2,495,943	\$2,583,301	\$2,673,716
Sitting fees			
Sitting fees	\$0	\$0	\$0
Sponsorship			
Conference Sponsorship	60,000	62,100	64,274
Conference Registration fees			
Conference/Seminar	25,000	25,875	26,781
Publication			
Publication	0	0	0
Interest income			
Interest income	5,000	5,175	5,356
Sundry income	0	0	0
Total - revenue	2,585,943	2,676,451	2,770,127
EXPENSE			
Banking & finance			
Accounting fees	5,000	5,175	5,356
Audit fees	13,000	13,455	13,926
Bank fees	1,000	1,035	1,071
Interest expense - hire purchase	0	0	0
Operation costs			
Books, journals & newspapers	5,000	5,175	5,356
Other meetings	0	0	0
Depreciation	101,000	109,000	118,000
Equipment <\$300	5,000	5,175	5,356
Insurance general	13,000	13,455	13,926
Legal fees	5,000	5,175	5,356
Office Supplies	13,000	13,455	13,926
Postage/Courier	6,000	6,210	6,427
Photocopier	9,000	9,315	9,641
Printing & Stationery	28,000	28,980	29,994
Repairs & Maint	1,500	1,553	1,607
Seminar & conference registration	15,000	15,525	16,068
Storage	0	0	0
Subscription & membership	10,000	10,350	10,712
Telecommunication & internet	36,000	37,260	38,564
Travel & accommodation	36,000	37,260	38,564
Misc.	13,000	13,455	13,926
IT			
Computer & network maint	3,000	3,105	3,214
Computer software and maint	10,000	10,350	10,712
Knowledge management sys maint	8,000	8,280	8,570
Web-site maint	4,000	4,140	4,285
Other IT related expense	3,000	3,105	3,214

	Year 1	Year 2	Year 3
Campaigns			
Marketing & promotions	26,000	26,910	27,852
Event & conferences	68,000	70,380	72,843
Employment related costs			
Wages	923,000	955,305	988,741
Superannuation	85,000	93,142	101,346
Payroll tax (NSW@5.45% above \$689,000)	13,000	13,455	13,926
Recruitment fees	13,000	13,455	13,926
Courses and training	31,000	32,085	33,208
Other employment related expense	5,000	5,175	5,356
Workers comp	3,443	3,563	3,688
Building costs			
Occupancy - Canberra	20,000	20,700	21,425
Head Office rent	82,500	85,388	88,376
Utilities/Other charges	18,000	18,630	19,282
Cleaning/Waste management	7,500	7,763	8,034
Security	1,000	1,035	1,071
Misc.			
2 year review			50,000
External consultants			
External/tech consultants	750,000	776,250	803,419
Board/Committee expense			
Access/Support service	2,000	2,070	2,142
Catering/Venue/AV	12,000	6,000	6,000
Board rem.	90,000	90,000	90,000
Occasional committee sitting fees	5,000	5,175	5,356
Travel and accommodation	57,000	29,000	29,000
Training - B & C	5,000	5,175	5,356
Total - expense	2,560,943	2,620,643	2,768,119
OPERATING SURPLUS/ Deficit	25,000	55,808	2,007
CAPITAL Expenditure			
Computers and IT	20,000	20,700	21,425
Furniture/Fit out	5,000	5,175	5,356
Depreciation Add-back	0	0	0
NET SURPLUS / DEFICIT	0	29,933	-24,773

DEPRECIATION BUDGET

Budget item	Cost in budget	Depreciation		
		Year 1	Year 2	Year 3
Equipment <\$300	5,000	\$5,000	\$5,000	\$5,000
Computers and IT	20,000	\$7,000	\$7,000	\$7,000
Furniture/Fit out	5,000	\$1,000	\$1,000	\$1,000
Office Fit Out	\$300,000	\$60,000	\$60,000	\$60,000
Equipment	40000	\$13,000	\$13,000	\$13,000
Furnishings	30000	\$6,000	\$6,000	\$6,000
Computer/server	25000	\$8,000	\$8,000	\$8,000
Cabling	5000	\$1,000	\$1,000	\$1,000
Capital Expenditure in year 1	\$25,000	\$-	\$8,000	\$8,000
Capital Expenditure in year 2	\$25,875	\$-		\$9,000
Total		\$101,000	\$109,000	\$118,000

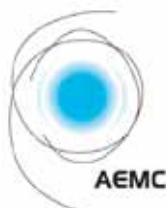
APPENDIX C

List of Roundtable participants

- Australian Capital Territory Council of Social Service
- Australian Council of Social Service
- Alternative Technology Association
- Brotherhood of St Laurence (Victoria)
- Centre for Credit and Consumer Law (Queensland)
- Consumer Action Law Centre (Victoria)
- Choice
- Council of Social Service of New South Wales (NCOSS)
- Consumer Utilities Advocacy Centre (Victoria)
- Ethnic Communities Council NSW
- Kildonan UnitingCare Child and Family Services (Victoria)
- Moreland Energy Foundation (Victoria)
- Public Interest Advocacy Centre (New South Wales)
- Queensland Consumers' Association
- Queensland Council of Social Service
- South Australian Council of Social Service
- St Vincent de Paul Society (Victoria)
- Tasmanian Council of Social Service
- Tenants Union of Victoria
- Total Environment Centre (New South Wales)
- Uniting Care Wesley Adelaide (South Australia)
- Victorian Council of Social Service
- Western Australian Council of Social Service.

APPENDIX D

Letters of support

**Australian Energy Market Commission**

Level 5, 201 Elizabeth Street Sydney NSW 2000
PO Box A2449, Sydney South NSW 1235

P – 02 8296 7800
F – 02 8296 7899
E – aemc@aemc.gov.au
ABN 49 236 270 144
www.aemc.gov.au

Our ref: 09F504 / 12-20826

17 September 2012

Fiona McLeod
Director
GPO Box 1334
Melbourne Vic 3011

Dear Fiona

National Consumer Advocacy

I refer to our telephone conversation on 14 September 2012 regarding your work on behalf of consumer advocacy groups who are seeking to establish a national consumer advocacy body.

I confirm that the AEMC believes that residential and small commercial consumers are underrepresented in the rule change review processes conducted by the AEMC. It is generally our experience that these groups of consumers lack an effective voice that has the capacity to view market issues from a strategic perspective. The establishment of a national body that has the following characteristics would improve the quality of the stakeholder engagement processes conducted by the AEMC by better informing the AEMC's analysis and decisionmaking:

- good level of technical competence and access to specialists;
- ability to view market issues from a strategic perspective;
- understand the complex and interrelated nature of issues that affect the supply of energy;
- able to set priorities and focus its research and advocacy accordingly;
- able to access on-the-ground jurisdictional experience and knowledge; and
- able to inform and educate consumers on energy issues.

To date the AEMC's stakeholder engagement has been dominated by industry, large consumers, regulatory bodies and government. The addition of an effective residential and small commercial voice will provide complete coverage.

Happy to discuss further.

Yours sincerely

Steven Graham
Chief Executive



Our Ref:
Your Ref:
Contact Officer: Angela Bourke
Contact Phone: 03 9290 1910

26 September 2012

Ms Fiona McLeod
Facilitator
National Energy Advocacy Body Project
GPO Box 1334
Melbourne VIC 3001

Dear Ms McLeod

National energy consumer advocacy

I refer to our recent discussions around your project to develop a proposal for a national energy customer advocacy body. The AER considers that the transition to a national framework for the regulation of the Australian retail energy market and initiatives to increase consumer engagement in network revenue regulatory processes highlight a greater need for national energy advocacy work. We are of the view that further action and work is required to ensure that the views of all energy customers are represented effectively in this new regulatory environment and to ensure that the impacts upon customers are appropriately considered and reflected in decision-making.

To date, the interests of residential and small business consumers have not been well-represented in policy development conducted by the Australian Energy Market Commission (AEMC), nor have those groups been able to effectively participate in the development of guidelines by the AER related to its economic regulatory functions. This, in our view, reflects the challenges that representatives of those consumers face in having the human and financial resources, as well as the technical capacity, to engage in this complex and often fast-moving space.

We have identified a number of key areas in the near future where a national approach to energy advocacy would be highly beneficial. These include:

- Contributions to reviews of national rule change processes. In the short-term critical reviews include the AEMC's review into the economic regulation of network service providers and its 'Power of Choice' review. Over the longer-term, and with adoption of the National Energy Customer Framework in each jurisdiction, reviews into changes

proposed to the National Energy Retail Rules will require strong consumer engagement and advocacy.

- The AER's own Guideline development work program, to commence in late-2012, which will set out how the new economic regulatory framework for network businesses will be implemented and operate for the next round of regulatory determinations. This will cover highly technical and complex areas such as setting the rate of return for network businesses; dealing with capital expenditure overspends and the development of appropriate incentives; setting levels of efficient capital and operating expenditure; as well as guidance on how network businesses should engage with their customers and community representatives in developing their spending proposals.
- Detailed engagement with network businesses and the AER in the development and assessment of businesses' spending proposals as part of the distribution determination or access arrangement review process. Again this will require engagement on highly technical and complex areas of revenue and pricing proposals put forward by businesses, including the balance between changes in expenditure and service delivery.

The AER has benefited from the existing strong and diverse consumer advocacy voice, especially through the development of the National Energy Customer Framework and the AER Guidelines that underpin our roles under the Framework.

However, some of the key areas of focus identified above have not been fully addressed under the current jurisdictional-based advocacy arrangements. These will be of critical importance going forwards and are likely to require input and engagement from a stronger national energy advocacy voice from early 2013.

Please don't hesitate to contact me should you wish to discuss this further.

Yours sincerely

Andrew Reeves
Chair
Australian Energy Regulator



18 October 2012

Ms Fiona McLeod
Facilitator
National Energy Advocacy Body Project

Dear Fiona

National energy consumer advocacy

The members of the Australia & New Zealand Energy and Water Ombudsman Network (ANZEWON) are pleased to support the establishment of a national consumer advocacy body in the energy area.

We are aware that there are some strong and active consumer groups at a state level, but there has not been a dedicated national consumer voice for energy issues at a critical time when we are moving to a national consumer protection framework to complement the national energy market.

It is essential that the consumer voice is heard in consultations and discussions about energy policy in Australia, especially as many aspects of energy policy impact significantly on consumers, particularly low income and vulnerable consumers.

A national consumer body will be able to develop expertise and understanding of energy issues, and strongly represent the position of consumers, including low income and vulnerable consumers, to balance that of industry, business, government and other stakeholders.

Yours sincerely

Clare Petre, Energy & Water Ombudsman NSW, on behalf of
Cynthia Gebert, Energy & Water Ombudsman Victoria
Forbes Smith, Energy & Water Ombudsman Queensland
Chris Field, Energy & Water Ombudsman Western Australia
Leon Atkinson-MacEwen, Energy Ombudsman Tasmania

APPENDIX E

ECA Implementation Plan

Commencement date (unknown) awaiting COAG decision.

Energy Consumers Australia Ltd is aiming for a 1 July 2013 opening.

Month 1

- COAG decision finalised
- Start up funding received by three Members
- ECA's three Members meet to commence ASIC processes for creation of Energy Consumers Australia Ltd
- ECA's three Members form independent Board Nominations Committee with external representation and engage external recruiter, to select inaugural Directors and Chair

Month 2

- Directors and Chair selection completed
- ASIC approval obtained
- CEO recruitment by inaugural Directors through external recruiter
- Year one of approved three year Operating funding received
- First ECA Budget approved by Directors
- Continue discussions with ACCAN about possible co-location

Month 3

- CEO commencement and ECA staff recruitment
- CEO begins to find premises, engage real estate broker
- Board training

Month 4

- ECA staff recruited and contracts signed
- Sign commercial lease
- Begin office fit out
- Staff training
- First staff and team meetings
- Board and staff commence Strategic Plan and Annual Work Program
- KPIs and operational work plans developed

Month 5

- Develop and refine consumer engagement and reference strategy, (which includes facilitation of, and participation in, the National Energy Consumer Roundtable), and the formation of reference groups, and committees as needed

Month 6

- Launch of Energy Consumers Australia (ECA) Ltd

